




ACTION CALENDAR

October 2, 2012

To: Honorable Chairperson and Members of the Joint Powers Financing Authority

From:  Christine Daniel, Chief Administrative Officer

Submitted by: Robert Hicks, Director, Finance

Subject: Refunding of 1999 Lease Revenue Bonds and 2003 Certificates of Participation

RECOMMENDATION

1. Adopt a Resolution approving the amended and restated bylaws of the Berkeley Joint Powers Financing Authority.
2. Adopt a Resolution authorizing the issuance and sale of 2012 Refunding Lease Revenue Bonds to refinance outstanding 1999 Bonds and 2003 Certificates of Participation, and approving related documents and official actions.

FISCAL IMPACTS OF RECOMMENDATION

This is a parallel item to the City Council item related to the refunding of the City's 1999 Lease Revenue Bonds and 2003 Certificates of Participation. The City currently makes debt service payments on the 1999 Lease Revenue Bonds from the Capital Improvement Fund and 2003 Certificates of Participation from the Building Purchases & Management Fund. Anticipated savings from lower interest rates are projected to be approximately \$3.8 million through FY 2033. The City can structure the savings to achieve approximately \$1,300,000 for FY 2013 and \$500,000 for FY 2014, while still generating annual savings of over \$100,000 per year starting in FY 2015 through FY 2033. The majority of the debt service savings will come from the refunding of the 2003 Certificates of Participation. All funds contribute to the payment of the debt service on the 2003 Certificates of Participation. CalPERS payments are projected to go up significantly starting in FY 2014. The reduction in the debt service payments will enable the departments to contribute to the CalPERS increase, since all departments will pay a lower rate on the debt service payments. The savings will be set aside in the PERS Savings Fund (#933) in order to assist in paying for the increased CalPERS payments.

CURRENT SITUATION AND ITS EFFECTS

The average interest rate on the 1999 lease revenue bonds is 5.52% and the bonds can be redeemed on any date with no prepayment penalty. The average interest rate on the 2003 certificates of participation is 4.67% and the certificates of participation can be

redeemed on any date with a 1% prepayment penalty. The current interest rate is estimated to be approximately 3.90%. By adopting this recommendation, the City can take advantage of lower interest rates in order to generate significant savings to the general fund by lowering the annual debt service on these two outstanding obligations.

The City has traditionally issued the majority of its financing obligations (excluding general obligation bonds) through the Berkeley Joint Powers Financing Authority (the "JPFA") that was created in the mid-1990s. The JPFA was created as a joint exercise of powers authority by the City and the Berkeley Redevelopment Agency pursuant to a Joint Exercise of Powers Agreement. Pursuant to recent State redevelopment legislation, the Berkeley Redevelopment Agency has been dissolved and has been succeeded by the Berkeley Redevelopment Successor Agency. Pursuant to the same legislation, however, the Berkeley Redevelopment Successor Agency will dissolve within one year after the last debt of the Successor Agency has been satisfied. Given the requirement to have a minimum of two entities as parties to a joint exercise of powers agreement, City staff and legal counsel recommend an amendment of the Joint Exercise of Powers Agreement to add a third party that will, eventually, replace the Successor Agency as the second party, and City staff recommends using the California Municipal Finance Authority (the "CMFA") as the new member. CMFA is a southern California-based joint exercise of powers authority; 150 municipalities are members of CMFA. CMFA shares 25% of all issuance fees directly with its member communities and makes a grant equal to 25% of the issuance fee to the California Foundation for Stronger Communities ("CFSC") to fund charities designated by the member communities. Under the amended Joint Exercise of Powers Agreement, control of the JPFA will remain with the governing body (which is the City Council).

In order to add the CMFA to the JPFA, the following actions are required: (1) approval by the City, the Berkeley Redevelopment Successor Agency and CMFA of an Amended and Restated Joint Exercise of Powers Agreement for the JPFA, (2) approval by the JPFA of amended and restated bylaws and (3) execution by the parties of the Amended and Restated Joint Exercise of Powers Agreement. The City will also need to execute a Joint Exercise of Powers Agreement to join CFMA.

BACKGROUND

The City issued \$9,125,000 of lease revenue bonds in October 1999 to fund the acquisition of property (Harrison Park) and improvements to the Berkeley Repertory Theater. Annual debt service has averaged \$625,000 with the final payment in FY 2029/30. The current principal balance on the 1999 lease revenue bonds is \$7,010,000. The average interest rate is 5.52% and the bonds can be redeemed on any date with no prepayment penalty.

The City issued \$27,950,000 of certificates of participation in April 2003 to fund the acquisition of the 1947 Center Street building and make capital improvements. The annual debt service is approximately \$1,900,000 per year with a final maturity in FY 2033. The current principal balance on the 2003 certificates of participation is

\$24,665,000. The average interest rate is 4.67% and the certificates of participation can be redeemed on any date with a 1% prepayment penalty.

The attached Preliminary Official Statement has been prepared by staff and the financing team. The Preliminary Official Statement must include all facts that would be material to an investor in the 2012 Refunding Lease Revenue Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the 2012 Refunding Lease Revenue Bonds.

RATIONALE FOR RECOMMENDATION

The City can take advantage of lower interest rates in order to generate significant savings by lowering the annual debt service on its two outstanding obligations. This refunding will also consolidate these two bond issues into one single obligation.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Robert Hicks, Finance Director, Finance, 510-981-7300

Attachments:

- 1: Resolution – Authority Commission of the Berkeley Joint Powers Financing Authority Approving Bylaws and Certain Related Matters
Exhibit A: Amended & Restated Bylaws of the Berkeley Joint Powers Financing Authority
- 2: Resolution – Authority Commission of the Berkeley Joint Powers Financing Authority Authorizing the Issuance and Sale of 2012 Refunding Lease Revenue Bonds to Refinance Outstanding 1999 Bonds and 2003 Certificates of Participation and Approving Related Documents and Official Actions
- 3: Preliminary Official Statement
- 4: Indenture of Trust
- 5: Escrow Deposit and Trust Agreement
- 6: Assignment Agreements relating to the Theatre, Office Building and Senior Center
- 7: First Amendment to Site Lease (Office Building)
- 8: First Amendment to Site & Facilities Lease
- 9: Amended & Restated Lease Agreement (Office Building)
- 10: Amended & Restated Lease Agreement (Theater)
- 11: Amended & Restated Lease/Purchase Agreement
- 12: Berkeley Refunding Bond Purchasing Agreement

RESOLUTION NO. _____

APPROVING BYLAWS AND CERTAIN RELATED MATTERS OF THE BERKELEY
JOINT POWERS FINANCING AUTHORITY

WHEREAS, the Berkeley Joint Powers Financing Authority (the "Authority") was formed under a Joint Exercise of Powers Agreement dated as of January 11, 1994 (the "Original Agreement"), between the Berkeley Redevelopment Agency (the "Agency") and the City of Berkeley (the "City"); and

WHEREAS, the Original Agreement was amended and restated in its entirety by the Amended and Restated Joint Exercise of Powers Agreement dated as of October 2, 2012, among the City, the California Municipal Finance Authority (the "CMFA") and the Berkeley Redevelopment Successor Agency (the "Successor Agency"); and

WHEREAS, the Authority Commission of the Authority now desires to revise its existing bylaws and desires to adopt amended and restated bylaws governing the operation of the Authority.

NOW THEREFORE, BE IT RESOLVED by the Berkeley Joint Powers Financing Authority as follows:

Section 1. Adoption of Bylaws. The Amended and Restated Bylaws of the Berkeley Joint Powers Financing Authority attached hereto as Exhibit A (the "Bylaws") are, as of the date hereof, adopted as the bylaws of the Authority.

Section 2. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

**AMENDED AND RESTATED
BYLAWS
OF THE
BERKELEY JOINT POWERS FINANCING AUTHORITY**

**ARTICLE I
THE AUTHORITY**

Section 1. Name of Authority. The name of the Authority shall be the “Berkeley Joint Powers Financing Authority” (the “Authority”).

Section 2. Seal of Authority. The Authority may have a seal. The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and the year of its organization.

Section 3. Office of Authority. The office of the Authority shall be at the offices of the City of Berkeley, Martin Luther King Jr. Civic Center Building, 2180 Milvia Street, Berkeley, California 94704.

Section 4. Governing Body. The members of the City Council of the City of Berkeley shall constitute the governing body of the Authority, which governing body shall be known as the Authority Commission.

**ARTICLE II
OFFICERS**

Section 1. Officers. The officers of the Authority shall be a President, a Vice-President, a Secretary, a Treasurer, a Chief Administrative Officer, a General Counsel and an Auditor. An officer shall sign for and in the name of the Authority all contracts, deeds and other instruments made by the Authority.

Section 2. President. The President shall be the member of the Authority Commission who is the then current Mayor of the City of Berkeley. The President shall preside at all meetings of the Authority.

Section 3. Vice-President. The Vice-President shall be the member of the Authority Commission who is the then current Vice Mayor the City of Berkeley. The Vice-President shall perform the duties of the President in the absence or incapacity of the President.

Section 4. Secretary. The Secretary shall be the then current or acting City Clerk of the City of Berkeley. The Secretary shall keep the records of the Authority, shall act as Secretary of the meetings of the Authority Commission and record all votes, and shall keep a record of the proceedings of the Authority in the form of minutes to be kept for such purpose, and shall perform all duties incident to the office of Secretary. The Secretary shall keep in safe custody the seal of the Authority and shall have power to affix such seal as required to all contracts and instruments authorized to be executed by the Authority Commission. The Secretary may attest to signatures of other officers of the Authority.

Section 5. Treasurer. The Treasurer shall be the then current or acting Director of Finance of the City of Berkeley. The Treasurer shall keep regular books of accounts showing receipts and expenditures and shall render to the Authority Commission, as requested, an account of the transactions of the Authority and shall perform the duties required by the Joint Exercise of Powers Act, being California Government Code Section 6500 et seq. (the "Act") and any other duties that are designated from time to time by the Authority. The Treasurer or in the absence of the Treasurer, a person appointed by the Treasurer or the Authority Commission, shall have the care and custody of all funds of the Authority. The Treasurer may enter into agreements on behalf of the Authority with any financial institution authorized to accept deposits of public funds, providing for the transfer of funds between accounts maintained therein by the Authority upon request by telephone. Such agreements may also provide for the investment upon request by telephone of funds maintained in such accounts, in property or securities in which public agencies may legally invest money subject to their control. Such agreements shall designate the accounts maintained by the Authority which are subject thereto, and the persons who may, from time to time, make such transfers and direct such investments by telephone request.

Section 6. Auditor. The Auditor shall be the then current City Auditor of the City of Berkeley and shall perform or cause to be performed the audit functions required by the Act and such additional audit functions as requested by the Authority Commission.

Section 7. Chief Administrative Officer. The Chief Administrative Officer shall be the then current or acting City Manager of the City of Berkeley. The Chief Administrative Officer shall conduct day-to-day administration of the Authority's business and affairs, subject to the direction of the Authority Commission.

Section 8. General Counsel. The then current City Attorney of the City shall serve as General Counsel to the Authority.

Section 9. Additional Duties. The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or these Bylaws or by resolution, rules and regulations or by motion of the Authority Commission. Any officer of the Authority may sign, with the countersignature of one other officer, deputy officer or member of the Authority, all orders and checks for the payment of money under the direction of the Authority.

Section 10. Assistants and Deputies; Additional Personnel. Whenever an officer of the Agency or the City is designated an officer of the Authority, the assistants and deputies of such officers from time to time shall also be, ex officio, officers of the Authority; and whenever a power is granted to, or a duty imposed upon, such officer, the power may be exercised, or a duty performed, by such assistant or deputy. The Authority Commission may from time to time employ such other personnel as it deems necessary to exercise its powers, duties and functions. The selection and compensation of such officers and other personnel shall be determined by the Authority Commission.

ARTICLE III MEETINGS

Section 1. Regular Meetings. Regular meetings of the Authority Commission shall be held on the same date and at the same place as regular meetings of the City Council of the City,

and shall be held approximately 30 minutes prior to the City Council meeting unless otherwise specified by the President. The Authority Commission shall hold at least one regular meeting each year, which shall be the same date and place as the first regular meeting of the City Council. If the Secretary of the Authority Commission does not post an agenda for a regular meeting pursuant to Government Code Section 54954.2, then such failure to post shall be deemed to be a determination by the President that no items required discussion and, therefore, that the regular meeting should be cancelled, except as otherwise provided in Section 54954.2.

Section 2. Special Meetings. A special meeting may be called at any time by the President or upon the request of a majority of the members of the Authority Commission as permitted by law.

Section 3. Closed Sessions. Nothing contained in these bylaws shall be construed to prevent the Authority Commission from holding closed sessions during a regular or special meeting concerning any matter permitted by law to be considered in a closed session.

Section 4. Public Hearing. All public hearings held by the Authority Commission shall be held during regular or special meetings of the Authority Commission.

Section 5. Adjourning Meetings and Continuing Public Hearings to Other Times or Places. The Authority Commission may adjourn any meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time-to-time. If all members are absent from any regular meeting or adjourned regular meeting, the Secretary or Acting Secretary of the Authority may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the manner permitted by law.

Any public hearing being held, or any hearing noticed or ordered to be held at any meeting may by order or notice of continuance be continued, or reconvened to any subsequent meeting in the same manner and to the same extent set forth herein for the adjournment of the meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing a copy of the order or notice of continuance shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Section 6. Applicability of Ralph M. Brown Act. Meetings of the Authority shall be held, notice given and the business of the Authority conducted, all as provided in the Ralph M. Brown Act, being California Government Code Section 54950 et seq.

Section 7. Quorum. A majority of the members of the Authority Commission shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained. Action may be taken by the Authority Commission upon a vote of a majority of a quorum, unless a higher vote is required by law or by these Bylaws.

Section 8. Manner of Voting. The manner of voting on resolutions and on other matters shall be as prescribed by the President.

**ARTICLE IV
AMENDMENTS**

Section 1. Amendments to Bylaws. The Bylaws may be amended by the Authority at any regular or special meeting by the affirmative vote of a majority of the members of the Authority Commission.

RESOLUTION NO. ____

AUTHORIZING THE ISSUANCE AND SALE OF 2012 REFUNDING LEASE REVENUE BONDS TO REFINANCE OUTSTANDING 1999 BONDS AND 2003 CERTIFICATES OF PARTICIPATION, AND APPROVING RELATED DOCUMENTS AND OFFICIAL ACTIONS

WHEREAS, the City of Berkeley (the "City"), the Berkeley Redevelopment Successor Agency and the California Municipal Finance Authority previously authorized and executed an Amended and Restated Joint Exercise of Powers Agreement dated as of October 2, 2012, pursuant to which there has been established the Berkeley Joint Powers Financing Authority (the "Authority") as a joint powers authority under the laws of the State of California; and

WHEREAS, in 1999, the Authority issued its \$9,125,000 Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 1999 (the "1999 Bonds"), pursuant to a Trust Indenture, dated as of October 1, 1999, by and among the Authority, the City of Berkeley (the "City") and The Bank of New York Mellon Trust Company, N.A., as trustee (the "1999 Trustee"); and

WHEREAS, the Authority issued the 1999 Bonds to provide financing for the acquisition by the Authority of a theater facility pursuant to an Acquisition Agreement, dated as of October 1, 1999, between the Authority and Berkeley Repertory Theatre, a California nonprofit, public benefit corporation, which the Authority leased to the City pursuant to a Lease Agreement, dated as of October 1, 1999 (the "1999 Theater Lease"), and which the City subsequently subleased to Berkeley Repertory Theatre, a California nonprofit, public benefit corporation, pursuant to a Sublease Agreement, dated as of October 1, 1999; and

WHEREAS, the Authority also issued the 1999 Bonds to provide financing for the acquisition by the City of Harrison Park, which the City leased to the Authority pursuant to a Site and Facilities Lease, dated as of August 1, 1999 (the "1999 Site Lease") and which the Authority subleased to the City pursuant to a Lease/Purchase Agreement, dated as of October 1, 1999 (the "1999 Park Lease"); and

WHEREAS, in 2003, the City entered into (a) a Site Lease, dated as of February 1, 2003 (the "2003 Site Lease"), with the Authority for the purpose of leasing certain real property and an office building located on such real property, commonly referred to as 1947 Center (the "2003 Leased Property") and (ii) a Lease Agreement, dated as of February 1, 2003 (the "2003 Lease Agreement"), pursuant to which the Authority leased the 2003 Leased Property back to the City; and

WHEREAS, also in 2003, the City caused execution and delivery of the \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects) (the "2003 Certificates"), pursuant to a Trust Agreement, dated as of February 1, 2003, among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "2003 Trustee"), for the purpose of financing acquisition, construction,

equipping and improvement of the 2003 Leased Property and various other public improvements; and

WHEREAS, the 2003 Certificates represent direct, undivided fractional interests in the lease payments made by the City under the 2003 Lease Agreement; and

WHEREAS, in order to achieve debt service savings for the benefit of the residents of the City, the City proposes the issuance by the Authority of its Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "Bonds") for the purpose of refinancing (but not prepaying) the obligations of the City under the 1999 Theater Lease, the 1999 Park Lease and the 2003 Lease Agreement, and causing a refunding of the 1999 Bonds and the 2003 Certificates; and

WHEREAS, in connection with the issuance of the Bonds, and to reflect the issuance of the Bonds and the resulting debt service savings, and, in the case of the 1999 Site Lease and the 1999 Park Lease, to reflect the substitution of real property to be leased thereunder, the City and the Authority will enter into the following lease agreements (collectively, the "2012 Lease Amendments"): (i) an amendment of the 1999 Site Lease, (ii) an amendment and restatement of the 1999 Theater Lease, (iii) an amendment and restatement of the 1999 Park Lease, (iv) an amendment of the 2003 Site Lease and (v) an amendment and restatement of the 2003 Lease Agreement; and

WHEREAS, the Authority Commission wishes at this time to approve all proceedings to which it is a party relating to the issuance and sale of the Bonds and assist the City in the refinancing of the 1998 Bonds and the 2003 Certificates.

NOW THEREFORE, BE IT RESOLVED by the Berkeley Joint Powers Financing Authority, as follows:

SECTION 1. Issuance of Bonds. The Authority Commission hereby authorizes the issuance of the Bonds under Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"), in the maximum principal amount of \$34,500,000, for the purpose of providing funds to refinance the 1998 Bonds and the 2003 Certificates. The Bonds shall be issued under the Bond Law and the Indenture of Trust that is approved below. The issuance of the Bonds and the refinancing of the 1999 Bonds and the 2003 Certificates will result in a refinancing, but not a prepayment, of the lease payments under the 1999 Theater Lease, the 1999 Park Lease or the 2003 Lease Agreement.

SECTION 2. Approval of Related Financing Agreements. The Authority Commission hereby approves each of the following agreements required for the issuance and sale of the Bonds and the refinancing of the 1999 Bonds and the 2003 Certificates, in substantially the respective forms on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Chief Administrative Officer or the Treasurer/Auditor (each, an "Authorized Officer"), whose execution thereof shall be conclusive evidence of the approval of any such changes or additions. An Authorized Officer is hereby authorized and directed for and on behalf of the Authority to

execute, and the Secretary is hereby authorized and directed to attest, the final form of each such agreement, as follows:

- Indenture of Trust, between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), setting forth the terms and provisions relating to the Bonds.
- 2012 Lease Amendments.
- Assignment Agreement, one or more Assignment Agreements, between the Authority and the Trustee, whereby the Authority assigns certain of its rights under the lease agreements to the Trustee for the benefit of the Bond owners.
- Escrow Deposit and Trust Agreement, among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as escrow agent, 1999 Trustee and 2003 Trustee, providing for the deposit, investment and application of funds to refinance the 1999 Bonds and 2003 Certificates

SECTION 3. Sale of Bonds. The Authority Commission hereby authorizes and directs the negotiated sale of the Bonds to _____ (the "Underwriter"). The Bonds shall be sold pursuant to the terms and provisions of a Bond Purchase Agreement among the Authority, the City and the Underwriter in substantially the form on file with the Secretary together with any changes therein or additions thereto deemed advisable by an Authorized Officer.

The Bonds shall be sold at such price and shall bear interest at such rates as shall produce a minimum net present value savings to the City of at least 3% of the principal amount of the outstanding 1999 Bonds and the 2003 Certificates, as such savings shall be verified and conclusively determined by the City's financial advisor (the "Minimum Savings Requirement").

SECTION 4. Official Statement. The Authority Commission hereby approves the preliminary Official Statement describing the Bonds in substantially the form on file with the Secretary. The Executive Director is hereby authorized and directed to approve any changes in or additions to said preliminary Official Statement and to execute an appropriate certificate stating the Executive Director's determination that the preliminary Official Statement (together with any changes therein or additions thereto) has been deemed nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934. Distribution of the preliminary Official Statement by the Underwriter is hereby approved. The Executive Director is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by the Executive Director shall be conclusive evidence of approval of any such changes and additions. The Authority Commission hereby authorizes the distribution of the final Official Statement by the Underwriter. The final Official Statement shall be executed on behalf of the Authority by the Executive Director.

SECTION 5. Official Actions. The President, the Chief Administrative Officer, the Treasurer/Auditor, the Secretary, the general counsel to the Authority and all other officers of the Authority are each authorized and directed on behalf of the Authority to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance and other documents, which they or any of them deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf if such officer is absent or unavailable.

SECTION 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

PRELIMINARY OFFICIAL STATEMENT DATED OCTOBER __, 2012

NEW ISSUE - FULL BOOK-ENTRY

RATINGS: Standard & Poor's: "_____"
See "Ratings".

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however, to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although, for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is required to be taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "TAX MATTERS."



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BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)

Dated: Date of Delivery

Due: October 1, as shown on inside cover

Authority for Issuance. The 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "Bonds") are being issued by the Berkeley Joint Powers Financing Authority (the "Authority") under a resolution adopted by the Authority Commission of the Authority on October 2, 2012, and an Indenture of Trust dated as of October 1, 2012 (the "Indenture") by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee for the Bonds (the "Trustee"). See "THE BONDS - Authority for Issuance."

Use of Proceeds. The proceeds of the Bonds will be used to (i) refinance three outstanding lease obligations of the City of Berkeley (the "City") and related outstanding revenue bonds and certificates of participation of the City and (ii) pay the costs of issuing the Bonds. See "REFINANCING PLAN."

Security for the Bonds. Under the Indenture, the Bonds will be payable solely from and secured by Revenues and certain funds and accounts held under the Indenture. Revenues consist primarily of lease payments ("Lease Payments") to be made by the City pursuant to three lease agreements (collectively, the "Leases"), by and between the Authority and the City, for the leasing of certain real property. Under the Leases, the City covenants to take such action as necessary to include the Lease Payments in its annual budgets and to make all necessary appropriations for such Lease Payments (subject to abatement under certain circumstances as described in this Official Statement).

The Authority will not create or maintain a debt service reserve account for the Bonds. See "SECURITY FOR THE BONDS."

Bond Terms; Book-Entry Only. The Bonds will bear interest at the rates shown on the inside cover page, payable semiannually on February 1 and August 1, commencing February 1, 2013, and will be issued in fully-registered form without coupons in the denomination of \$5,000 or any integral multiple of \$5,000. The Bonds will be issued in book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. Payments of the principal of, premium, if any, and interest on the Bonds will be made to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the Bonds. See "THE BONDS - General Provisions."

Redemption. The Bonds are subject to redemption prior to maturity. See "THE BONDS - Redemption."

NONE OF THE BONDS, NOR THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST ON THE BONDS, NOR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS, CONSTITUTES A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY. SEE "SECURITY FOR THE BONDS."

MATURITY SCHEDULE
(see inside cover)

The following firm, serving as "Financial Advisor", has assisted in the structuring of this issue:



THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE OF BONDS. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE PURCHASE OF THE BONDS.

The Bonds are offered when, as and if issued and received by the Underwriter and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the Authority and the City by Jones Hall, A Professional Law Corporation, as Disclosure Counsel. Certain legal matters will be passed upon for the City and the Authority by the City Attorney. It is anticipated that the Bonds will be delivered in book-entry form through the facilities of DTC on or about October __, 2012.

* Preliminary, subject to change.

[UNDERWRITER LOGO]

The date of this Official Statement is: October __, 2012.

MATURITY SCHEDULE
(Base CUSIP†: _____)

<u>Maturity</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP†</u>
2011				
2012				
2013				
2014				
2015				
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				

† Copyright 2012, American Bankers Association. CUSIP data are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., and are provided for convenience of reference only. Neither the City, the Authority nor the Underwriter assumes any responsibility for the accuracy of these CUSIP data.

**BERKELEY JOINT POWERS FINANCING AUTHORITY
CITY OF BERKELEY**

AUTHORITY COMMISSION/CITY COUNCIL

Tom Bates, *Mayor*
Linda Maio, *Councilmember District 1*
Darryl Moore, *Councilmember District 2*
Max Anderson, *Councilmember District 3*
Jesse Arreguín, *Councilmember District 4*
Laurie Capitelli, *Councilmember District 5*
Susan Wengraf, *Councilmember District 6*
Kriss Worthington, *Councilmember District 7*
Gordon Wozniak, *Councilmember District 8*

AUTHORITY/CITY OFFICIALS

Christine Daniel
City Manager

Robert Hicks
Director of Finance

William Rogers
Deputy City Manager

Zach Cowan
City Attorney

Ann-Marie Hogan
Auditor

BOND COUNSEL AND DISCLOSURE COUNSEL

Jones Hall, A Professional Law Corporation
San Francisco, California

FINANCIAL ADVISOR

NHA Advisors LLC
San Rafael, California

TRUSTEE/ESCROW BANK

The Bank of New York Mellon Trust Company, N.A.
San Francisco, California

REGIONAL MAP

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Bonds and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not to be construed as a contract with the purchasers of the Bonds.

Estimates and Forecasts. When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases “will likely result,” “are expected to,” “will continue,” “is anticipated,” “estimate,” “project,” “forecast,” “expect,” “intend” and similar expressions identify forward looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. The information and expressions of opinion in this Official Statement are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, give rise to any implication that there has been no change in the affairs of the City since the date of this Official Statement.

Limit of Offering. No dealer, broker, salesperson or other person has been authorized by the City or the Underwriter to give any information or to make any representations other than those contained in this Official Statement and, if given or made, such other information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Limited Scope of Information. The City has obtained certain information set forth in this Official Statement from sources which are believed to be reliable, but such information is neither guaranteed as to accuracy or completeness, nor to be construed as a representation of such by the City. The information and expressions of opinions in this Official Statement are subject to change without notice and neither delivery of this Official Statement nor any sale of the Bonds shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date of this Official Statement. All summaries of or references to the documents referred to in this Official Statement are made subject to the provisions of such documents and do not purport to be complete statements of any or all of such provisions. All capitalized terms used in this Official Statement, unless noted otherwise, have the meanings given in the Indenture.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

Stabilization of Prices. In connection with this offering, the Underwriter may over allot or effect transactions which stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time. The Underwriter may offer and sell the Bonds to certain dealers and others at prices lower than the public offering prices set forth on the inside cover page and the public offering prices may be changed from time to time by the Underwriter.

City Website. The City maintains a website. However, the information presented there is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXCEPTION FROM THE REGISTRATION REQUIREMENTS CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

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OFFICIAL STATEMENT

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**BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 REFUNDING LEASE REVENUE BONDS
(1999 AND 2003 REFINANCING)**

INTRODUCTION

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices, and the documents summarized or described in this Official Statement. A full review should be made of the entire Official Statement. The offering to potential investors is made only by means of the entire Official Statement.

Capitalized terms used but not defined in this Official Statement have the meanings set forth in the Indenture (as defined below). See "APPENDIX A - Summary of Principal Legal Documents."

Authority for Issuance. The Berkeley Joint Powers Financing Authority (the "**Authority**") is issuing its 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "**Bonds**") under the following legal authority:

(a) Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 (the "**Bond Law**"),

(b) a resolution adopted by the Authority Commission (the "**Commission**") of the Authority on October 2, 2012 (the "**Authority Resolution**"), and a resolution adopted by the City Council (the "**City Council**") of the City of Berkeley (the "**City**") on October 2, 2012 (the "**City Resolution**"), and

(c) an Indenture of Trust (the "**Indenture**"), dated as of October 1, 2012, by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**Trustee**").

Form of Bonds; Book-Entry Only. The Bonds will be issued in fully registered form, registered in the name of The Depository Trust Company, New York, New York ("**DTC**"), or its nominee, which will act as securities depository for the Bonds. Purchasers of the Bonds will not receive certificates representing the Bonds that are purchased. See "THE BONDS - Book-Entry Only System" and "APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM."

Purpose of the Bonds. The Bonds are being issued to provide funds to (i) refinance three outstanding lease obligations of the City and related outstanding lease revenue bonds of

* Preliminary, subject to change.

the Authority and certificates of participation of the City and(ii) pay the costs of issuing the Bonds.

Security for the Bonds and Pledge of Revenues. The Bonds will be payable solely from and secured by Revenues and certain funds and accounts held under the Indenture. Revenues consist primarily of Lease Payments to be made by the City pursuant to the following lease agreements, each dated as of October 1, 2012, between the City and the Authority (collectively, the "**Leases**"):

(i) Amended and Restated Lease Agreement (Theater) (the "**Theater Lease**"), pursuant to which the Authority leases a community theater to the City (the "**Theater**").

(ii) Amended and Restated Lease/Purchase Agreement (the "**Senior Center Lease**"), pursuant to which the Authority leases a senior center and related improvements to the City (the "**Senior Center**").

(iii) Amended and Restated Lease Agreement (Office Building) (the "**Office Lease**"), pursuant to which the Authority leases an office building to the City (the "**Office Building**").

See "THE LEASED PROPERTY." Under the Leases, the City covenants to take such action as necessary to include the Lease Payments in its annual budgets and to make all necessary appropriations for such Lease Payments (subject to abatement under certain circumstances described in the Leases). See "SECURITY FOR THE BONDS."

Lease Payments payable by the City under the Leases are calculated to be sufficient to permit the Authority to pay the principal of, and interest on, the Bonds when due. However, under certain circumstances, Lease Payments may be abated under the Leases without constituting a default. See "BONDOWNERS' RISKS – Abatement."

By separate agreements between the Authority and the Trustee (the "**Assignment Agreements**"), the Authority has assigned to the Trustee for the benefit of the Owners of the Bonds, certain of the Authority's rights under the Leases, including its rights to receive Lease Payments for the purpose of securing the payment of debt service on the Bonds.

No Additional Parity Obligations. Under the Indenture, the Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

No Reserve Fund. The Authority will not create or maintain a debt service reserve account for the Bonds. See "SECURITY FOR THE BONDS."

Redemption. The Bonds are subject to redemption prior to their stated maturity dates. See "THE BONDS - Redemption."

Abatement. The Leases provide that the obligation of the City to pay Lease Payments will be subject to abatement by reason of (i) any damage or destruction such that there is substantial interference with the use and occupancy of all or any portion of the Leased Property, or (ii) a temporary taking of the Leased Property or a permanent taking of a portion of the Leased Property.

However, to the extent proceeds of rental interruption insurance are available with respect to the Bonds (as described below), Lease Payments (or a portion thereof) may be made from those sources. See "BOND OWNERS' RISKS - Abatement."

Limited Obligation. None of the Bonds, the obligation of the Authority to pay principal of or interest on the Bonds, nor the obligation of the City to make the Lease Payments, constitutes a debt or a liability of the Authority, the City, the State of California or any of its political subdivisions within the meaning of any Constitutional limitation on indebtedness, or a pledge of the full faith and credit of the City. The Bonds are secured solely by the pledge of Revenues and certain funds held under the Indenture. The Bonds are not secured by a pledge of the taxing power of the City. See "SECURITY FOR THE BONDS"

Risks of Investment. The Bonds are repayable primarily from Lease Payments and other amounts payable by the City under the Leases. For a discussion of some of the risks associated with the purchase of the Bonds, see "BOND OWNERS' RISKS."

REFINANCING PLAN

The Bonds are being issued to provide funds to refinance three outstanding lease obligations of the City (collectively, the "**Original Leases**"):

(i) Lease Agreement, dated as of October 1, 1999 (the "**Original Theater Lease**"), relating to the Theater.

(ii) Lease/Purchase Agreement, dated as of October 1, 1999 (the "**Original Park Lease**"), relating to the Park. The Senior Center Lease is an amendment and restatement of the Original Park Lease, under which the City had leased a public park (the "**Park.**")

(iii) Lease Agreement, dated as of February 1, 2003 (the "**Original Office Lease**"), relating to the Office Building.

As a result of the refinancing of the Original Theater Lease and the Original Park Lease, the Authority will concurrently defease and provide for redemption of the Authority's outstanding \$9,125,000 Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 1999 (the "**1999 Bonds**"), which the Authority issued pursuant to a Trust Indenture, dated as of October 1, 1999 (the "**1999 Trust Indenture**"), by and among the Authority, the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**1999 Trustee**").

As a result of the refinancing of the Original Office Lease, the City will concurrently defease and provide for prepayment of its outstanding \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects) (the "**2003 Certificates**"), which were executed and delivered pursuant to a Trust Agreement, dated as of February 1, 2003 (the "**2003 Trust Agreement**"), among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**2003 Trustee**").

Refunding of the 1999 Bonds

The 1999 Bonds. The 1999 Bonds were issued by the Authority to provide financing for the acquisition of the Theater and the Park. The 1999 Bonds are currently outstanding in the principal amount of \$6,770,000.

The 1999 Bonds are subject to optional redemption on any date at a redemption price equal to the principal amount of the 1999 Bonds to be redeemed, plus accrued interest to the redemption date, without premium.

Proposed Refinancing. On the date of issuance of the Bonds (the “**Closing Date**”), pursuant to an Escrow Deposit and Trust Agreement, dated as of October 1, 2012 (the “**Escrow Agreement**”), by and among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “**Escrow Agent**”), the Authority and the City will cause to be transferred to The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “**Escrow Agent**”), for deposit into an escrow fund for the 1999 Bonds (the “**1999 Bonds Escrow Fund**”), an amount sufficient to redeem the 1999 Bonds on November 10, 2012. The Escrow Agent will invest a portion of the amounts deposited in the 1999 Bonds Escrow Fund in federal securities.

Following the redemption of the 1999 Bonds, the Escrow Agent will transfer any amounts remaining on deposit in the 1999 Bonds Escrow Fund to the Trustee to be applied to pay interest next coming due and payable on the Bonds.

The amounts held and invested by the Escrow Agent in the 1999 Bonds Escrow Fund are pledged solely to the payment of the 1999 Bonds. Neither the funds deposited in the 1999 Bonds Escrow Fund nor the interest on the invested funds will be available for the payment of debt service on the Bonds.

Refunding of the 2003 Certificates

The 2003 Certificates. The 2003 Certificates were executed and delivered to provide financing for the acquisition and improvement of the Office Building. The 2003 Certificates are currently outstanding in the principal amount of \$24,665,000.

The 2003 Certificates are subject to optional prepayment on any date between February 1, 2012 and January 31, 2013, at a prepayment price equal to the principal component of the Certificates to be prepaid, plus accrued interest to the prepayment date, plus a premium of 1%.

Proposed Refinancing. On the Closing Date, pursuant to the Escrow Agreement, the Authority and the City will cause to be transferred to the Escrow Agent, for deposit into an escrow fund for the 2003 Certificates (the “**2003 Certificates Escrow Fund**”), an amount sufficient to prepay the 2003 Certificates on November 10, 2012. The Escrow Agent will invest a portion of the amounts deposited in the 2003 Certificates Escrow Fund in federal securities.

Following the redemption of the 2003 Certificates, the Escrow Agent will transfer any amounts remaining on deposit in the 2003 Certificates Escrow Fund to the Trustee to be applied to pay interest next coming due and payable on the Bonds.

The amounts held and invested by the Escrow Agent in the 2003 Certificates Escrow Fund are pledged solely to the payment of the 2003 Certificates. Neither the funds deposited in

the 2003 Certificates Escrow Fund nor the interest on the invested funds will be available for the payment of debt service on the Bonds.

Estimated Sources and Uses of Funds

The estimated sources and uses of funds relating to the Bonds are as follows:

Sources:

Principal Amount

Plus Amounts relating to 1999 Bonds

Plus Amounts relating to 2003 Certificates

Plus Original Issue Premium/

Less Original Issue Discount

Less Underwriter's Discount

Total Sources

Uses:

Escrow Fund

Costs of Issuance⁽¹⁾

Total Uses

(1) Represents funds to be used to pay Costs of Issuance, which include legal fees, printing costs, rating agency fees and other miscellaneous expenses.

THE LEASED PROPERTY

Overview

The Leased Property consists of (i) the real property and improvements constituting the Senior Center, (ii) the real property and improvements constituting the Theater and (iii) the real property and improvements constituting the Office Building.

The Senior Center

The Senior Center, known as the "North Berkeley Senior Center," is located at 1901 Hearst Avenue in the City. Construction of the Senior Center was completed in 1977. The Senior Center consists of a lounge area, kitchen, dining area, large activity room, eight activity rooms, computer room, small meeting room, two private offices, three shared office spaces, and six bathrooms. The Senior Center is not a residential facility.

[The Senior Center was designed in accordance with the California Building Code (CBC) in effect in 1977.]

[The Senior Center is protected by a fire sprinkler system designed in accordance with the applicable requirements.]

Under the Senior Center Lease, the Trustee has no right to enter and re-lease the Senior Center in the event of a default by the City in the payment of Lease Payments under the Senior Center Lease. See "SECURITY FOR THE BONDS – Remedies" and "BOND OWNERS RISKS – Default."

The Theater

The Theater constitutes the Berkeley Repertory Theatre and is located at 2025 Addison Street in the City. Construction of the Theater was completed in 2001, at which time it was purchased by the Authority. The 600-seat Theater building sits on a 0.35-acre site and is a two-story, 15,424-square foot building, including a proscenium stage, and 80-foot fly tower (making it easier to produce shows with more complex scenery), a full trap room underneath the stage (allowing actors and props to suddenly “appear” on stage), a two-tiered lobby facing Addison Street and a courtyard.

The Theater was designed in accordance with the 1997 California Building Code (CBC) in effect in 1999.

The Theater is protected by a fire sprinkler system designed in accordance with the applicable requirements.

Pursuant to a Sublease Agreement, dated as of August 1, 1999, the City subleases the Theater to Berkeley Repertory Theatre, a community theater company. As a result of the Sublease Agreement, the Trustee is not permitted under the Theater Lease to enter and re-lease the Theater in the event of a default by the City in the payment of Lease Payments under the Theater Lease. See “SECURITY FOR THE BONDS – Remedies” and “BOND OWNERS RISKS – Default.”

The Office Building

The Office Building is located at 1947 Center Street, Berkeley. The Office Building, which was constructed in the 1940s, is a six-story reinforced concrete office building with approximately 105,000 square feet. The building is used to house various City departments (currently approximately 77,326 square feet) as well as some private sub-tenants (currently approximately 27,674 square feet).

The cost of acquisition (\$18,038,939) and construction (\$6,000,000) of the Office Building was financed with proceeds of the 2003 Certificates (\$27,891,759) and other available City funds. The construction work financed with proceeds of the 2003 Certificates consisted of rehabilitation of the basement, first, second, third and fourth floors and the lobby, and was completed in 2005.

The Office Building was renovated in accordance with the then-applicable California Building Code (CBC).

The Office Building is protected by a fire sprinkler system designed in accordance with the applicable requirements.

Under the Office Lease, the Trustee has no right to enter and re-lease the Office Building in the event of a default by the City in the payment of Lease Payments under the Office Lease. See “SECURITY FOR THE BONDS – Remedies” and “BOND OWNERS RISKS – Default.”

Modifications of Leased Property

Under the Leases, the City will have the right during the term of the Leases to make additions, modifications and improvements to the Leased Property or any portion thereof. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law or in any way which would impair the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and the Leased Property, upon completion of any additions, modifications and improvements, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Substitution

Under the Senior Center Lease and the Office Lease only, the City has the option at any time and from time to time, to substitute other real property (the “**Substitute Property**”) for the Leased Property or any portion thereof (the “**Former Property**”), upon satisfaction of all of the requirements set forth in the Lease, which includes (among others) the following:

- No Event of Default has occurred and is continuing.
- The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment of the applicable Lease that adds the legal description of the Substitute Property thereto and deletes therefrom the legal description of the Former Property.
- The City has obtained a CLTA policy of title insurance insuring the City’s leasehold estate under the Lease in the Substitute Property, subject only to Permitted Encumbrances (as defined in the Lease), in an amount at least equal to the estimated value thereof.
- The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.
- The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- The City has filed with the Authority and the Trustee a written certificate of the City or other written evidencing stating that the estimated rental value of the Substitute Property is at least equal to the estimated rental value of the Former Property, and that the useful life of the Substitute Property at least extends to the termination date of the applicable Lease.
- The City has mailed written notice of the substitution to each rating agency that then maintains a rating on the Bonds.

See “APPENDIX A – Summary of Principal Legal Documents.”

After a substitution, the Former Property will be released from the leasehold, as appropriate. The Authority and the City will also make any amendments needed to be made to the applicable Site Lease, Lease and Assignment Agreement. Such amendments may be made without the consent of Bondowners. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments as a result of a substitution.

Release of Leased Property

Under the Senior Center Lease and the Office Lease only, the City has the option at any time and from time to time during the term of the Lease to release from the Lease any portion of the Leased Property; provided that the City satisfies all of the requirements under the Lease that are conditions precedent to such removal, which include (among others) the following:

- No Event of Default has occurred and is continuing.
- The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment of the applicable Lease which removes the Released Property from the applicable Site Lease and such Lease.
- The City has certified in writing to the Authority and the Trustee that the fair rental value of the property which remains subject to the Lease following such release is at least equal to the Lease Payments thereafter coming due and payable.
- The City has mailed written notice of such release to each rating agency that then maintains a rating on the Bonds.

See "APPENDIX A - Summary of Principal Legal Documents."

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THE BONDS

Authority for Issuance

The Bonds are being issued under the Bond Law, the Authority Resolution (which was adopted by the Authority Commission of the Authority on October 2, 2012), the City Resolution (which was adopted by the City Council on October 2, 2012), and the Indenture.

General Provisions

Bond Terms. The Bonds will be dated their date of delivery and issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple of \$5,000. The Bonds will mature in the amounts and on the dates, and bear interest at the annual rates, set forth on the inside cover page of this Official Statement.

Payments of Principal and Interest. Interest on the Bonds will be payable on February 1 and August 1, commencing February 1, 2013 (each an “**Interest Payment Date**”). Principal on the Bonds will be payable on February 1 in the amounts and in the years set forth on the inside front cover of this Official Statement.

While the Bonds are subject to the book-entry system, the principal, interest and any prepayment premium with respect to the Bonds will be paid by the Trustee to DTC for subsequent disbursement to beneficial owners of the Bonds. See “- Book-Entry Only System” below.

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Principal and premium, if any, with respect to each Bond is payable upon surrender of such Bond at the Office of the Trustee in San Francisco, California, upon maturity or the earlier redemption thereof.

The principal of, premium, if any, and interest on the Bonds will be payable in lawful money of the United States of America.

Calculation of Interest. Interest on the Bonds will accrue from the Interest Payment Date next preceding its date of authentication unless:

- (i) it is authenticated after a Record Date and before the close of business on the immediately following Interest Payment Date, in which event interest with respect thereto will be payable from such Interest Payment Date, or

(ii) it is authenticated on or before the Record Date immediately preceding the first Interest Payment Date, in which event interest with respect thereto will be payable from its dated date.

However, if at the time of authentication of any Bond, interest with respect thereto is in default, interest will be payable from the Interest Payment Date to which interest has previously been paid or made available for payment or from its dated date if no interest has been paid or made available for payment.

Interest with respect to the Bonds will be computed on the basis of a 360-day year composed of twelve 30-day months.

Transfer, Registration and Exchange

See “APPENDIX A - Summary of Principal Legal Documents” for a description of the provisions of the Indenture relating to the transfer, registration and exchange of the Bonds.

Redemption

Optional Redemption. The Bonds maturing on or before October 1, 2022 are not subject to optional redemption prior to their stated maturity. The Bonds maturing on or after October 1, 2023 are subject to redemption, as a whole or in part at the election of the Authority among maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on October 1, 2022 and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.*

Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Bonds are subject to redemption as a whole, or in part on a pro rata basis among maturities, on any date, from any Net Proceeds of insurance or eminent domain award with respect to the Leased Property which are not applied to repair, rebuild or replace the Leased Property as provided in the Indenture, at a redemption price equal to 100% of the principal amount to be redeemed plus interest accrued thereon to the date fixed for redemption, without premium.

* Preliminary; subject to change.

Mandatory Sinking Fund Redemption. The Bonds maturing on October 1, _____, are subject to redemption prior to their stated maturity, in part by lot, from mandatory sinking fund payments provided for in the Indenture, on any October 1 on or after June 1, _____, upon payment of the principal amount thereof and interest accrued thereon to the date fixed for redemption, as set forth below (subject to modification in the event of mandatory or optional redemption mentioned above):

Bonds Maturing October 1, _____

<u>Redemption Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>
--	-----------------------------------

*

* Maturity

Selection of Bonds for Redemption. Whenever provision is made in the Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee will select the Bonds to be redeemed from all Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, Bonds will be deemed to be comprised of \$5,000 portions and each portion will be subject to redemption as if such portion were a separate Bond.

Notice of Redemption; Rescission. Notice of redemption will be mailed by the Trustee, first class, postage prepaid, not more than 60 and not less than 30 days before any redemption date, to the respective registered Owners of any Bonds designated for redemption at their addresses appearing on the registration books maintained by the Trustee and to one or more Securities Depositories and the Municipal Securities Rulemaking Board. Neither the failure to receive any notice nor any defect therein will affect the proceedings for such redemption.

The Authority has the right to rescind any notice of the redemption of Bonds by written notice to the Trustee on or prior to the dated fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent.

Partial Redemption of Bonds. Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

Effect of Redemption. If notice of redemption has been duly given as aforesaid and money for the payment of the redemption price of the Bonds called for redemption has been duly provided, such Bonds so called will cease to be entitled to any benefit under the Indenture other than the right to receive payment of the redemption price, and no interest will accrue thereon from and after the redemption date specified in such notice.

Book-Entry Only System

The Bonds will be issued as fully registered bonds in book-entry only form, registered in the name of Cede & Co. as nominee of DTC, and will be available to ultimate purchasers in the denomination of \$5,000 or any integral multiple of \$5,000, under the book-entry system maintained by DTC. While the Bonds are subject to the book-entry system, the principal, interest and any prepayment premium with respect to a Bond will be paid by the Trustee to DTC, which in turn is obligated to remit such payment to its DTC Participants for subsequent disbursement to Beneficial Owners of the Bonds. Purchasers of the Bonds will not receive certificates representing their interests therein, which will be held at DTC.

See "APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM" for further information regarding DTC and the book-entry system.

DEBT SERVICE SCHEDULE

The table below shows annual debt service payments on the Bonds, assuming no optional redemption.

Year Ending October 1	Bonds Principal	Bonds Interest	Bonds Debt Service
2013			
2014			
2015			
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			

SECURITY FOR THE BONDS

The principal of and interest on the Bonds are not a debt of the Authority (except to the limited extent described in this Official Statement) or the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of their respective property, or upon any of their income, receipts, or revenues except the Revenues and other amounts pledged under the Indenture.

This section provides summaries of the security for the Bonds and certain provisions of the Indenture and the Lease. See "APPENDIX A - Summary of Principal Legal Documents" for a more complete summary of the Indenture and the Leases. Capitalized terms used but not defined in this section have the meanings given in APPENDIX A.

Pledge of Revenues

The Bonds are payable from and secured by a pledge of Revenues and certain funds and accounts established and held by the Trustee under the Indenture. Revenues, as defined in the Indenture, mean:

(a) all amounts received by the Authority or the Trustee under or with respect to the Leases, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), *but excluding* (i) any amounts described in the provisions of the Leases relating to permitted amendments that provide for Additional Payments to be pledged or assigned for the payment of bonds issued to finance or refinance projects for which the City is authorized to expend its funds, and (ii) any Additional Payments (consisting of certain administrative costs due to the Authority and the Trustee under the Leases), and

(b) all interest, profits or other income derived from the investment of amounts in any fund or account established under the Indenture.

Pursuant to the Assignment Agreements, the Authority has assigned to the Trustee for the benefit of the Owners of the Bonds, certain of its rights under the Leases, including its right to receive Lease Payments for the purpose of securing the payment of debt service on the Bonds.

THE BONDS ARE SPECIAL OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM AND SECURED BY A PLEDGE OF REVENUES AND CERTAIN FUNDS AND ACCOUNTS HELD UNDER THE INDENTURE. THE AUTHORITY HAS NO TAXING POWER. THE OBLIGATION OF THE CITY TO MAKE LEASE PAYMENTS UNDER THE LEASES DOES NOT CONSTITUTE AN OBLIGATION OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE BONDS NOR THE OBLIGATION OF THE CITY TO MAKE LEASE PAYMENTS UNDER THE LEASES CONSTITUTES AN INDEBTEDNESS OF THE CITY, THE COUNTY, THE STATE OF CALIFORNIA (THE "STATE") OR ANY OF ITS POLITICAL SUBDIVISIONS (INCLUDING ANY MEMBER OF THE AUTHORITY) IN CONTRAVENTION OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATIONS.

Lease Payments; Covenant to Appropriate

The City covenants, under the Leases, to make Lease Payments as rental for the right to use and occupy the Leased Property under the Leases and in the amounts specified in the Leases. Amounts of the scheduled Lease Payments are calculated to be sufficient to pay debt service on the Bonds when due. Lease Payments will be paid by the City annually to the Trustee, as the assignee of the Authority, on the third to the last day of the month or as otherwise set forth in the Leases. Under the Indenture, upon receipt, the Trustee will deposit the Lease Payments in the Bond Fund for the purposes of paying principal of and interest on the Bonds. The City covenants under the Leases to take such action as may be necessary to include all Lease Payments and Additional Rent in its annual budgets and to make the necessary annual appropriations for all such rental payments.

Under certain circumstances described in the Leases, however, Lease Payments are subject to abatement during periods of substantial interference with the City's use and occupancy of all or a portion of the Leased Property, as described in " – Abatement" below.

Abatement

The Leases provide that the obligation of the City to pay Lease Payments will be subject to abatement during any period(s) in which by reason of damage, destruction or taking by eminent domain or condemnation with respect to any portion of the Leased Property there is substantial interference with the use and possession of such portion of the Leased Property by the City. Such abatement will be in an amount determined by the City, who shall obtain an independent MAI appraisal, which determination shall be such that the resulting Lease Payments represent fair consideration for the use and possession of the portion of the Leased Property not damaged, destroyed or taken. Such abatement shall continue for the period commencing with such damage, destruction or taking and ending with the substantial completion of the replacement or work or repair.

Notwithstanding the foregoing, under the Leases, there shall be no abatement if the Bond Fund is available to pay the amount which would otherwise be abated.

See "BONDOWNERS' RISKS – Abatement."

Insurance; Condemnation

The City is required to procure and maintain rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of certain hazards pursuant to the Leases. Such insurance will be in an amount not less than the maximum remaining scheduled Lease Payments in any future 24-month period. The Net Proceeds of such insurance shall be paid to the Trustee and deposited (1) in the Reserve Account to make up any deficiencies therein, and (2) otherwise in the Bond Fund, to be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

The Lease also requires the City to maintain title insurance, standard commercial general liability insurance and casualty insurance with respect to the Leased Property. The required casualty insurance will have minimum liability limits of \$1,000,000 for bodily injury or death of each person and \$3,000,000 for bodily injury or deaths of two or more persons in each accident or event (subject to a deductible clause of not to exceed \$250,000), and in a minimum

amount of \$150,000 for damage to property resulting from each accident or event, and may be in the form of a single limit policy in the minimum amount of \$4,000,000 covering all such risks.

Pursuant to the Indenture, the Trustee shall deposit Net Proceeds of insurance it receives on behalf of title insurance and casualty and theft insurance in the Insurance and Condemnation Fund promptly upon receipt thereof. If the Leased Property is damaged or destroyed in full, the Net Proceeds of such insurance shall be used by the City to rebuild or replace the Leased Property only if such proceeds are not sufficient to transfer to the Redemption Fund for full redemption of the Outstanding Bonds equal in aggregate principal amount to the unpaid Lease Payments allocable to the Leased Property. All proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Redemption Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, subject to the additional conditions set forth in the Leases. Any balance of the proceeds remaining after such work has been completed shall be paid to the City.

In the event that the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Authority shall deposit or cause to be deposited with the Trustee the Net Proceeds therefrom, which the Trustee shall deposit in the Insurance and Condemnation Fund. If the City has not notified the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for the replacement of the Leased Property or such portion thereof, the Trustee shall transfer such Net Proceeds to the Redemption Fund to be applied towards the redemption of the Bonds. If the City has notified the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for replacement of the Leased Property or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such replacement.

Reserve Account

The Authority will not create or maintain a debt service reserve account for the Bonds.

Remedies

If the City defaults in performance of its obligations under the Leases, the Trustee, as assignee of the Authority, may retain the Leases and hold the City liable for all payments on an annual basis. The Trustee, as assignee of the Authority, does not have the right to terminate the Leases and re-enter and re-let the Leased Property. In addition, the Trustee may pursue remedies at law or in equity to enforce the Leases.

THE AUTHORITY

The Authority is a joint exercise of powers authority duly organized and existing under a Joint Exercise of Powers Agreement dated as of January 11, 1994 (the "**Joint Powers Agreement**"), between the City and the Berkeley Redevelopment Agency (the "**Agency**"), and under the laws of the State of California.

The Authority is governed by an Authority commission made up ex officio of the members of the City Council of the City.

The Joint Powers Agreement provides that the debts, liabilities and obligations of the Authority are not debts, liabilities and obligations of the members of the Authority.

THE CITY

The City is located in Alameda County (the "**County**") on the east side of the San Francisco Bay, approximately 10 miles northeast of San Francisco. The City encompasses a total area of approximately 19 square miles and had an estimated January 1, 2012 population of 114,821, giving it the highest population density of any city in the East Bay. The City is defined to a large degree, both culturally and economically, by the presence of the University of California campus located on the eastern side of the City. The University of California is a major component of the City's economy, employing approximately 14,000 full and part-time workers.

The City is among the oldest in California. The City was founded in 1864, incorporated as a town in 1878, and incorporated as a City in 1909. The City's charter was adopted in 1895.

FINANCIAL INFORMATION RELATING TO THE CITY'S GENERAL FUND

For financial information relating to the City's General Fund, see "APPENDIX D - CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY; CITY FINANCIAL INFORMATION."

CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS

Limitations on Revenues

Article XIII A of the California Constitution. Article XIII A of the State Constitution, adopted and known as Proposition 13, was approved by the voters in June 1978. Section 1(a) of Article XIII A limits the maximum ad valorem tax on real property to one percent of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State law. Section 1(b) of Article XIII A provides that the one-percent limitation does not apply to ad valorem taxes levied to pay interest and redemption charges on (i) indebtedness approved by the voters prior to July 1, 1978, or (ii) bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast on the proposition, or (iii) bonded indebtedness incurred by a school district or community college district for the construction, reconstruction, rehabilitation or replacement of school facilities or the acquisition or lease of real property for school facilities, approved by 55% of the voters of the district, but only if certain accountability measures are included in the proposition. The tax for payment of the City’s general obligation bonds falls within the exception for bonds approved by a two-thirds vote.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the fiscal year 1975-76 tax bill, or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed two percent per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that, notwithstanding any other law, local agencies may not levy any ad valorem property tax except the 1% base tax levied by each County and taxes to pay debt service on indebtedness approved by the voters as described above.

Since its adoption, Article XIII A has been amended a number of times. These amendments have created a number of exceptions to the requirement that property be reassessed when purchased, newly constructed or a change in ownership has occurred. These exceptions include certain transfers of real property between family members, certain purchases of replacement dwellings for persons over age 55 and by property owners whose original property has been destroyed in a declared disaster, and certain improvements to accommodate disabled persons and for seismic upgrades to property. These amendments have resulted in marginal reductions in the property tax revenues of the City.

Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

Article XIII C and Article XIII D of the California Constitution. On November 5, 1996, the voters of the State approved Proposition 218, known as the “Right to Vote on Taxes Act.” Proposition 218 adds Articles XIII C and XIII D to the California Constitution and contains a number of interrelated provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges.

On November 2, 2010, California voters approved Proposition 26, entitled the “Supermajority Vote to Pass New Taxes and Fees Act.” Section 1 of Proposition 26 declares that Proposition 26 is intended to limit the ability of the State Legislature and local government to circumvent existing restrictions on increasing taxes by defining the new or expanded taxes as

“fees.” Proposition 26 amended Articles XIII A and XIII C of the State Constitution. The amendments to Article XIII A limit the ability of the State Legislature to impose higher taxes (as defined in Proposition 26) without a two-thirds vote of the Legislature. The amendments to Article XIII C define “taxes” that are subject to voter approval as “any levy, charge, or exaction of any kind imposed by a local government,” with certain exceptions.

Taxes. Article XIII C requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City (“**general taxes**”) require a majority vote; taxes for specific purposes (“**special taxes**”), even if deposited in the City’s General Fund, require a two-thirds vote. The voter approval requirements of Proposition 218 reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase such taxes in the future to meet increased expenditure needs.

Property-Related Fees, Charges and Assessments. Article XIII D also adds several provisions making it generally more difficult for local agencies to levy and maintain property-related fees, charges, and assessments for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments which exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that assessments must confer a “special benefit,” as defined in Article XIII D, over and above any general benefits conferred, (iii) a majority protest procedure for assessments which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected party, and (iv) a prohibition against fees and charges which are used for general governmental services, including police, fire or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reduction or Repeal of Taxes, Fees and Charges. Article XIII C also removes limitations on the initiative power in matters of reducing or repealing local taxes, assessments, fees or charges. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges currently comprising a substantial part of the City’s General Fund. If such repeal or reduction occurs, the City’s ability to pay debt service on the Bonds could be adversely affected.

Burden of Proof. Article XIII C provides that local government “bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” Similarly, Article XIII D provides that in “any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance” with Article XIII D.

Impact on City’s General Fund. The approval requirements of Articles XIII C and XIII D reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase the taxes, fees, charges or taxes in the future that it may need to meet increased expenditure needs.

The City does not believe that any material source of General Fund revenue is subject to challenge under Articles XIII C or XIII D.

Judicial Interpretation. The interpretation and application of Articles XIII C and XIII D will ultimately be determined by the courts with respect to a number of the matters discussed below, and it is not possible at this time to predict with certainty the outcome of such determination.

Expenditures and Appropriations

Article XIII B of the California Constitution. In addition to the limits Article XIII A imposes on property taxes that may be collected by local governments, certain other revenues of the State and local governments are subject to an annual “appropriations limit” or “Gann Limit” imposed by Article XIII B of the State Constitution, which effectively limits the amount of such revenues that government entities are permitted to spend. Article XIII B, approved by the voters in June 1979, was modified substantially by Proposition 111 in 1990. The appropriations limit of each government entity applies to “proceeds of taxes,” which consist of tax revenues, state subventions and certain other funds, including proceeds from regulatory licenses, user charges or other fees to the extent that such proceeds exceed “the cost reasonably borne by such entity in providing the regulation, product or service.” “Proceeds of taxes” exclude tax refunds and some benefit payments such as unemployment insurance. No limit is imposed on the appropriation of funds which are not “proceeds of taxes,” such as reasonable user charges or fees, and certain other non-tax funds.

Article XIII B also does not limit appropriation of local revenues to pay debt service on bonds existing or authorized by January 1, 1979, or subsequently authorized by the voters, appropriations required to comply with mandates of courts or the federal government, appropriations for qualified capital outlay projects, and appropriation by the State of revenues derived from any increase in gasoline taxes and motor vehicle weight fees above January 1, 1990, levels. The appropriations limit may also be exceeded in cases of emergency; however, the appropriations limit for the three years following such emergency appropriation must be reduced to the extent by which it was exceeded, unless the emergency arises from civil disturbance or natural disaster declared by the Governor, and the expenditure is approved by two-thirds of the legislative body of the local government.

The State and each local government entity has its own appropriations limit. Each year, the limit is adjusted to allow for changes, if any, in the cost of living, the population of the jurisdiction, and any transfer to or from another government entity of financial responsibility for providing services. Each school district is required to establish an appropriations limit each year. In the event that a school district’s revenues exceed its spending limit, the district may increase its appropriations limit to equal its spending by taking appropriations limit from the State.

Proposition 111 requires that each agency’s actual appropriations be tested against its limit every two years. If the aggregate “proceeds of taxes” for the preceding two-year period exceed the aggregate limit, the excess must be returned to the agency’s taxpayers through tax rate or fee reductions over the following two years. If the State’s aggregate “proceeds of taxes” for the preceding two-year period exceed the aggregate limit, 50% of the excess is transferred to fund the State’s contribution to school and college districts.

Voter Initiatives

Under the California Constitution, the power of initiative is reserved to the voters for the purpose of enacting statutes and constitutional amendments. Since 1978, the voters have exercised this power through the adoption of Proposition 13 and similar measures, the most recent of which was approved as Proposition 22 in the general election held on November 2, 2010.

Any such initiative may affect the collection of fees, taxes and other types of revenue by local agencies. Subject to overriding federal constitutional principles, such collection may be materially and adversely affected by voter-approved initiatives, possibly to the extent of creating cash-flow problems in the payment of outstanding obligations such as the Lease Payments.

Proposition 62. On November 4, 1986, California voters adopted Proposition 62, which requires that (i) any local tax for general governmental purposes (a “**general tax**”) must be approved by a majority vote of the electorate; (ii) any local tax for specific purposes (a “**special tax**”) must be approved by a two-thirds vote of the electorate; (iii) any general tax must be proposed for a vote by two-thirds of the legislative body; and (iv) proceeds of any tax imposed in violation of the vote requirements must be deducted from the local agency’s property tax allocation.

Most of the provisions of Proposition 62, which was a statutory initiative, were affirmed by the 1995 California Supreme Court decision in *Santa Clara County Local Transportation Authority v. Guardino*, which invalidated a special sales tax for transportation purposes because fewer than two-thirds of the voters voting on the measure had approved the tax. Claims for taxpayer relief where a local entity may have violated Proposition 62 are subject to a three-year statute of limitations, created by statute. In the case *Howard Jarvis Taxpayers Association v. City of La Habra* (2001), the California Supreme Court determined that this statute of limitations begins to run anew every time the city collects the challenged tax.

In the opinion of the City Attorney, Proposition 62 is inapplicable to the City because the City is a charter city. The City’s authority to impose local taxes under the “home rule” authority of the California Constitution, therefore, cannot be restricted by a statutory initiative like Proposition 62. It should be noted, however, that the Court did not reach this issue in *Guardino*.

Proposition 1A of 2004. Proposition 1A of 2004, proposed by the Legislature in connection with the State’s Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A of 2004 generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 1A of 2004 provided, however, that beginning in Fiscal Year 2008-09, the State may shift to schools and community colleges up to 8% of local government property tax revenues, which amount must be repaid, with interest, within three years, if the Governor proclaimed that the shift is needed due to a severe state financial hardship, the shift was approved by two-thirds of both houses and certain other conditions were met. The State could also approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county.

See “APPENDIX D - CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY; CITY FINANCIAL INFORMATION - State Budget and its Impact on the City” for information about the State’s budgets and shifts of local property revenues under Proposition 1A of 2004 (which must be repaid within three years).

Proposition 22. Proposition 22, entitled “The Local Taxpayer, Public Safety and Transportation Protection Act,” was approved by the voters of the State in November 2010. Proposition 22 eliminates or reduces the State’s authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

Unitary Property

AB 454 (Chapter 921, Statutes of 1986) provides that revenues derived from most utility property assessed by the State Board of Equalization (“**Unitary Property**”), commencing with the 1988-89 Fiscal Year, are allocated as follows: (i) each jurisdiction will receive up to 102% of its prior year State-assessed revenue; and (ii) if county-wide revenues generated from Unitary Property are less than the previous year’s revenues or greater than 102% of the previous year’s revenues, each jurisdiction will share the burden of the shortfall or benefit of the excess revenues by a specified formula. This provision applies to all Unitary Property except railroads, whose valuation will continue to be allocated to individual tax rate areas.

The provisions of AB 454 do not constitute an elimination of the assessment of any State-assessed properties nor a revision of the methods of assessing utilities by the State Board of Equalization. Generally, AB 454 allows valuation growth or decline of Unitary Property to be shared by all jurisdictions in a county.

Future Initiatives

Article XIII A, Article XIII B, Article XIII C, Article XIII D, and Propositions 1A of 2004, 22, 26 and 62 were each adopted as measures that qualified for the ballot through California’s initiative process. From time to time, other initiative measures could be adopted, further affecting the City or its revenues or the ability of the City to expend revenues.

State Budgets

The State of California is likely to continue to face significant budget issues for the foreseeable future. In connection with its approval of former budgets, the State Legislature regularly enacts legislation that has a direct impact on the financial situation of cities and counties in the State. See “APPENDIX D - CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY; CITY FINANCIAL INFORMATION - State Budget and its Impact on the City.”

BOND OWNERS' RISKS

The following describes certain special considerations and risk factors affecting the payment of and security for the Bonds. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any Bonds and does not necessarily reflect the relative importance of the various risks. Potential investors in the Bonds are advised to consider the following special factors along with all other information in this Official Statement in evaluating the Bonds. There can be no assurance that other considerations will not materialize in the future.

Special Obligations of the Authority

The Bonds are special obligations of the Authority and are payable solely from, and secured by, a pledge of Revenues and certain funds and accounts held under the Indenture. Revenues consist primarily of Lease Payments payable by the City under the Leases. If, for any reason, the Revenues collected under the Indenture are not sufficient to pay debt service on the Bonds, the Authority will not be obligated to utilize any other of its funds, other than moneys on deposit in the Bond Fund and certain other funds and accounts established under the Indenture, to pay debt service on the Bonds. The Authority has no taxing power.

No Pledge of Taxes

General. The obligation of the City to pay the Lease Payments and Additional Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments and Additional Payments does not constitute a debt or indebtedness of the Authority, the City, the State of California or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

Limitations on Taxes and Fees. Certain taxes, assessments, fees and charges presently imposed by the City could be subject to the voter approval requirements of Article XIIC and Article XIID of the State Constitution. Based upon the outcome of an election by the voters, such fees, charges, assessments and taxes might no longer be permitted to be imposed, or may be reduced or eliminated and new taxes, assessments fees and charges may not be approved. The City has assessed the potential impact on its financial condition of the provisions of Article XIIC and Article XIID of the State Constitution respecting the imposition and increase of taxes, fees, charges and assessments and does not believe that an election by the voters to reduce or eliminate the imposition of certain existing fees, charges, assessments and taxes would substantially affect its financial condition. However, the City believes that if the initiative power was exercised so that all local taxes, assessments, fees and charges that may be subject to Article XIIC and Article XIID of the State Constitution are eliminated or substantially reduced, the financial condition of the City, including its General Fund, could be materially adversely affected.

Although the City does not currently anticipate that the provisions of Article XIIC and Article XIID of the State Constitution would adversely affect its ability to pay Lease Payments and its other obligations payable from the General Fund, no assurance can be given regarding the ultimate interpretation or effect of Article XIIC and Article XIID of the State Constitution on the City's finances. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

Additional Obligations of the City

The City has existing obligations payable from its General Fund. See “APPENDIX D, CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY; CITY FINANCIAL INFORMATION - City Debt Structure.” The City is permitted to enter into other obligations that constitute additional charges against its revenues without the consent of Owners of the Bonds. To the extent that additional obligations are incurred by the City, the funds available to pay Lease Payments may be decreased.

The Lease Payments and other payments due under the Leases (including payment of costs of repair and maintenance of the Leased Property, taxes and other governmental charges levied against the Leased Property) are payable from funds lawfully available to the City. If the amounts that the City is obligated to pay in a fiscal year exceed the City’s revenues for such year, the City may choose to make some payments rather than making other payments, including Lease Payments and Additional Payments, based on the perceived needs of the City. The same result could occur if, because of California Constitutional limits on expenditures, the City is not permitted to appropriate and spend all of its available revenues or is required to expend available revenues to preserve the public health, safety and welfare.

Default

Whenever any event of default referred to in the Leases happens and continues, the Authority is authorized under the terms of the Leases to exercise any and all remedies available under law or granted under the Leases. See “APPENDIX A - Summary of Principal Legal Documents” for a detailed description of, except as described below, available remedies in the case of a default under the Leases.

In the event of a default, there is no remedy of acceleration of the total Lease Payments due over the term of the Leases. The Trustee is not empowered to sell the Leased Property and use the proceeds of such sale to prepay the Bonds or pay debt service on the Bonds. In addition, the Trustee is not empowered to enter and re-lease any of the Leased Property.

The City will be liable only for Lease Payments on an annual basis and, in the event of a default, the Trustee would be required to seek a separate judgment each year for that year’s defaulted Lease Payments. Any such suit for money damages would be subject to limitations on legal remedies against municipalities in California, including a limitation on enforcement of judgments against funds of a fiscal year other than the fiscal year in which the Lease Payments were due and against funds needed to serve the public welfare and interest.

Abatement

Under certain circumstances related to damage, destruction, condemnation or title defects which cause a substantial interference with the use and possession of the Leased Property, the City’s obligation to make Lease Payments will be subject to full or partial abatement and could result in the Trustee having inadequate funds to pay the principal and interest on the Bonds as and when due. See “SECURITY FOR THE BONDS - Abatement” and “APPENDIX A - Summary of Principal Legal Documents.”

Assessed Value of Taxable Property; Delinquent Payment of Property Taxes

Natural and economic forces can affect the assessed value of taxable property within the City. The City is located in a seismically active region, and damage from an earthquake in or

near the area could cause moderate to extensive damage to taxable property. Other natural or manmade disasters, such as flood, fire, toxic dumping, coastal erosion or acts of terrorism, could cause a reduction in the assessed value of taxable property within the City. Economic and market forces, such as a downturn in the regional economy generally, can also affect assessed values, particularly as these forces might reverberate in the residential housing and commercial property markets. In addition, the total assessed value can be reduced through the reclassification of taxable property to a class exempt from taxation, whether by ownership or use (such as exemptions for property owned by State and local agencies and property used for qualified educational, hospital, charitable or religious purposes).

Levy and Collection. The City does not have any independent power to levy and collect property taxes. Any reduction in the tax rate or the implementation of any constitutional or legislative property tax decrease could reduce the City's property tax revenues, and accordingly, could have an adverse impact on the ability of the City to make Lease Payments. Likewise, delinquencies in the payment of property taxes could have an adverse effect on the City's ability to pay principal of and interest on the Bonds when due.

Reduction in Inflationary Rate. Article XIII A of the California Constitution provides that the full cash value base of real property used in determining assessed value may be adjusted from year to year to reflect the inflationary rate, not to exceed a 2% increase for any given year, or may be reduced to reflect a reduction in the consumer price index or comparable local data. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS." Such measure is computed on a calendar year basis. Because Article XIII A limits inflationary assessed value adjustments to the lesser of the actual inflationary rate or 2%, there have been years in which the assessed values were adjusted by actual inflationary rates, which were less than 2%. Since Article XIII A was approved, the annual adjustment for inflation has fallen below the 2% limitation in the following fiscal years: 1983-84 (1.010%); 1995-96 (1.194%); 1996-97 (1.115%); 1999-00 (1.853%); 2004-05 (1.867%); 2010-11 (0.998%); 2011-12 (1.008%); and 2012-13 (1.02%). More information about inflationary assessed value adjustments can be accessed through the California State Board of Equalization's website, under the Final CCPI Announcement posted on the "Letters to Assessors" webpage for each year, at <http://www.boe.ca.gov/proptaxes/ltacont.htm>. *The reference to this internet website is shown for reference and convenience only, the information contained within the website may not be current and has not been reviewed by the City and is not incorporated herein by reference.*

The City is unable to predict if any adjustments to the full cash value base of real property within the City, whether an increase or a reduction, will be realized in the future.

Appeals of Assessed Values; Delinquencies. Reductions in the market values of taxable property may cause property owners to appeal assessed values and may also be associated with an increase in delinquency rates for taxes.

No assurance can be given that property tax appeals in the future will not significantly reduce the City's property tax revenues. There are two types of appeals of assessed values that could adversely impact property tax revenues:

Proposition 8 Appeals. Most of the appeals that might be filed in the City would be based on Section 51 of the Revenue and Taxation Code, which requires that for each lien date the value of real property must be the lesser of its base year value annually adjusted by the inflation factor pursuant to Article XIII A of the State Constitution or its full cash value, taking into

account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property or other factors causing a decline in value.

Under California law, property owners may apply for a reduction of their property tax assessment by filing a written application, in form prescribed by the State Board of Equalization, with the appropriate county board of equalization or assessment appeals board. In most cases, the appeal is filed because the applicant believes that present market conditions (such as residential home prices) cause the property to be worth less than its current assessed value. These market-driven appeals are known as Proposition 8 appeals.

Any reduction in the assessment ultimately granted as a Proposition 8 appeal applies to the year for which application is made and during which the written application was filed. These reductions are often temporary and are adjusted back to their original values when market conditions improve. Once the property has regained its prior value, adjusted for inflation, it once again is subject to the annual inflationary factor growth rate allowed under Article XIII A.

The County Assessor may also unilaterally reduce assessed values under Proposition 8 and did so in fiscal years 2009-10, 2010-11 and 2011-12.

Base Year Appeals. A second type of assessment appeal is called a base year appeal, where the property owners challenge the original (basis) value of their property. Appeals for reduction in the “base year” value of an assessment, if successful, reduce the assessment for the year in which the appeal is taken and prospectively thereafter. The base year is determined by the completion date of new construction or the date of change of ownership. Any base year appeal must be made within four years of the change of ownership or new construction date.

Decreases in the aggregate value of taxable property within the City resulting from natural disaster, reclassification by ownership or use, or as a result of the operation Proposition 8 all may have an adverse impact on the General Fund revenues available to make debt service payments on the Bonds.

In addition, failure by large property owners to pay property taxes when due may also cause a decrease in General Fund revenues available to make debt service payments on the Bonds.

See “-Calamities,” below, and “APPENDIX D, CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY; CITY FINANCIAL INFORMATION - Ad Valorem Property Taxes.”

Proposition 218

See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Article XIIC and Article XIID of the California Constitution,” for information about certain risks to the City’s General Fund revenues under Articles XIIC and Article XIID of the California Constitution.

Calamities

The value of the Leased Property, and the financial stability of the City, can be adversely affected by a variety of factors, particularly those that may affect infrastructure and other public improvements and private improvements, and the continued habitability and enjoyment of such private improvements. Such additional factors include, without limitation, geologic conditions

(such as earthquakes), topographic conditions (such as earth movements and landslides), climatic conditions (such as floods, tsunamis and droughts), fires and manmade conditions.

There can be no assurance that the occurrence of any calamity would not cause substantial interference to the Leased Property, or that the City would have insurance or other resources available to make repairs to the Leased Property in order to pay Lease Payments and other payments due under the Leases. See “- Abatement” above.

The topography of the City is varied, from the lowlands along the edge of the San Francisco Bay to the steeply sloping hillsides of residential neighborhoods. The City’s General Plan describes a number of the following hazards:

Seismic Hazards. The City is located in an area classified as Seismic Zone 4 by the Uniform Building Code (the “**UBC**”). The area includes all of the greater San Francisco Bay Area and all of coastal California. Seismic Zone 4 is the highest risk zone classification under the UBC.

A system of parallel active earthquake faults, including the Hayward, Rodgers Creek, Calaveras, San Andreas and numerous others, pose a potential threat to the community and create the potential for significant damage. All such major faults have numerous fault complexes and branches. Ground shaking is the most serious and direct hazard posed by earthquakes in the area. Earthquake induced ground shaking from a major earthquake on one of these faults could lead to surface fault rupture, ground failure and fire. A critical factor affecting the intensity of ground shaking is the geologic material underneath a site. Deep, loose soils, such as the clays and Bay mud prevalent in the lowland areas of City, will amplify and prolong the shaking. Ground shaking can be several times greater on sites underlain by weak sediments, like Bay mud, than on bedrock. Losses from shaking can occur where tall structures are built on thick, soft sediments. Damage from shaking is also influenced by the structural integrity of buildings before an earthquake. Damage to buildings and utilities in the City is likely to be greatest on those sites underlain by deep, loose, compressible deposits such as Bay mud.

Ground failure is a secondary effect of ground shaking and can include liquefaction, settlement, fault rupture, lateral spreading and landslides. Liquefaction occurs when saturated and poorly consolidated granular material is shaken during an earthquake and is transformed into a fluid-like state. Buildings can tilt or sink, utility lines can rise to the surface, and levees can fail. If soils are poorly consolidated, the ground can subside. The City faces the hazardous potential for liquefaction primarily in low-lying areas adjacent to the Bay. Settlement is the vertical consolidation of loose soils and alluvium caused by ground shaking or liquefaction. As a result of settlement, ground surface can drop a few inches to several feet. The risk of settlement is greatest along the City waterfront built on Bay mud. Earthquakes could also trigger landslides or fires, primarily in the hill areas, which could result in significant property damage.

Recent significant seismic events include the 1989 Loma Prieta earthquake on the San Andreas Fault, centered about 60 miles south of San Francisco, which registered 6.9 on the Richter scale of earthquake intensity. That earthquake caused fires and collapses of and structural damage to buildings, highways and bridges in the Bay Area. In April 2008, the Working Group on California Earthquake Probabilities (a collaborative effort of the U.S. Geological Survey, the California Geological Society, and the Southern California Earthquake Center) reported that there is a 63% chance that one or more quakes of magnitude 6.7 or larger will occur in the Bay Area before the year 2038. Such earthquakes may be very destructive. The U.S.G.S. predicts a magnitude 7 earthquake occurring today on the Hayward Fault, would likely

cause hundreds of deaths and approximately \$100 billion of damage. Property within the City could sustain extensive damage in a major earthquake, and a major earthquake could adversely affect the area's economic activity.

Enforcement of the UBC helps ensure that new construction will withstand the forces associated with a major earthquake. However, many of the buildings in the City pre-date the modern UBC and are susceptible to damage. The Association of Bay Area Governments estimates that 13,372 units in the City will be uninhabitable after a major earthquake, resulting in a total shelter population of 8,530. Commercial buildings, utilities, and public roads will be destroyed or disabled. Local businesses will be disrupted and potentially permanently altered. Many businesses may not be able to recover financially from the physical damage and the loss of sales revenue during the recovery period. In a seismic disaster, the most vulnerable buildings include: unreinforced masonry ("**URM**"), concrete frames, tilt-up buildings built before the mid-1970s, and buildings with soft stories. Additionally, buildings with termite damage, dry rot, poor construction quality or other structural conditions can further exacerbate seismic vulnerability, even if the structure was properly designed.

In 1986, Senate Bill 547 required cities to create an inventory of URMs and to develop a mitigation program. In 1989, the City compiled an inventory of URM buildings, and in 1991, the City adopted an ordinance mandating that notices of seismic hazard be made and seismic retrofitting begin on URM buildings built before 1956 (except for residential buildings with fewer than five units). A total of 727 properties containing potentially hazardous URM buildings were originally placed on the list. Of those, 230 properties remain on the URM list with deadlines for all except category VI having now passed. Starting in its fiscal year 2001, the City has targeted bringing the remaining buildings into compliance, with the higher-use buildings as a priority.

Over the past 20 years, the Berkeley community has made major accomplishments toward seismic risk reduction in the City. In 1992, the City's voters approved Measures G and A, which provided funds for the seismic retrofitting of all City fire stations and public schools, the creation of an emergency operations center, and improvements to the water system. Measure S was approved in 1996 and provided funds for seismic retrofit of the Central Library and the Civic Center Building (City Hall). The seismically reinforced Ronald Tsukamoto Public Safety Building, housing Police and Fire administrative staff, opened in 2000. Other public buildings remain to be seismically retrofitted, however.

Also in 1992, the City Council established the Residential Seismic Retrofitting Incentive Program that provides two types of financial incentives to homeowners to retrofit their homes. The City will waive up to one-third of the transfer tax on a home sale, if the funds are used for seismic upgrades of the property. Between fiscal year 1992/93 and fiscal year 1997/98, approximately \$3,589,400 in property transfer tax for approximately 7,641 properties was waived under the Residential Seismic Retrofitting Incentive Program. The City will waive permit fees for seismic retrofitting of non-strengthened homes and unreinforced masonry structures. Between 1992 and 1999, approximately \$1,079,000 in permit fees was waived for 4,100 permits under the Residential Seismic Retrofitting Incentive Program. These incentives are credited with giving Berkeley one of the highest residential retrofit rates in the state.

The Seismic Technical Advisory Group ("**STAG**"), which consists of University of California at Berkeley professors who are either earthquake-engineering experts or seismic safety public policy experts, was approved by City Council on March 14, 1995 to advise on seismic safety matters and assist in the development of a comprehensive seismic hazard mitigation strategy for the City. STAG has provided review for the seismic improvements to many City buildings, including the MLK Civic Center Building and the Public Safety Building.

Currently, STAG is reviewing the seismic upgrades of other public buildings and providing guidance for the Soft Story Assessment Project.

If there were to be an occurrence of severe seismic activity in the City, there could be substantial damage to and interference with the City's right to use and occupy all or a portion of the Leased Property, which could result in Lease Payments being subject to abatement. See "- Abatement" above. See "THE LEASED PROPERTY" for a description of the structural design of the Leased Property.

The City is not required to maintain earthquake insurance on the Leased Property unless it is commercially available at a reasonable cost.

Landslide. In the City, the potential for landslide as a result of seismic activity or heavy rain is high in the hill areas and along remnant stream banks in some parks and neighborhoods. Potential for hill slope failure, or landslide, depends upon the geologic composition of a slope and landslides are most frequent in high rainfall periods. Landslides involve the downslope movement of soil and rock, and earthquake-induced landslides will most likely occur in the same areas where landslides are caused by other conditions. Unstable slopes and soils subject to static settlement can become more acute during an earthquake. The hazards can include relatively large, loose debris flows. Hundreds of homes, roads, sidewalks and utilities are situated on historic landslide areas in the City.

Flood. The flood potential in the City is a relatively mild threat in comparison to seismic, landslide, and wildfire risks. Flooding events may occur as flash floods, local storm drain blockages, or tidally influenced events.

Seismically induced reservoir failure and inundation is unlikely, but such an event should be considered. Most of the City would be flooded in the event of dam failure at the Summit Reservoir; this reservoir is owned by the East Bay Municipal Utility District and is in the process of being replaced. Such a flood could produce catastrophic damage and casualties in the City. The dams at both reservoirs have been seismically strengthened during the last 30 years, making the risk of failure extremely low.

There also exists some potential for wave damage along the Berkeley waterfront. Tsunamis are long-period waves usually caused by off-shore earthquakes or landslides. Because the Berkeley shoreline does not face the open ocean, the City believes that its risk of experiencing a tsunami is very low. Most of the shoreline is protected by rip-rap (boulders) and would not be seriously affected. Tsunami waves have historically resulted in little damage around the San Francisco Bay.

Wildfire. The City faces an ongoing threat from urban and wildland fire. Susceptibility to fire is heightened due to Berkeley's dense development pattern, characterized by older structures including high rise buildings, multi-storied residential units, and a variety of warehouse, manufacturing, and commercial properties. Berkeley also faces a significant wildland fire danger along its hillsides where the wildland and residential areas interface. Wildland fires can result from both human activity and natural causes. Once ignited, these fires can be difficult to contain. The risk of fire is most common during the dry months of May through October, and can become extreme when the warm, dry Diablo winds blow out of the northeast. When the winds blow strongly, fires occurring in the densely vegetated hill areas are extremely difficult to control. A wildfire can move with great speed, down from the ridge in 30 minutes, expanding to one square mile in one hour, and then consuming hundreds of residences in a

day. In the Berkeley and Oakland Hills there have been 14 wildland fires since 1923, which collectively have burned 9,000 acres and destroyed more than 3,500 structures.

In the aftermath of the 1991 Firestorm, the City established the Hill Hazardous Fire Area District, to expand inspection programs, reduce excess vegetation, and educate residents about the special needs for vegetation management and fire prevention for people living in the urban/wildland interface. Hazardous fire area inspections are conducted annually by fire companies, between May and September. Vegetation removal programs, including the chipper and debris box programs, continue with funding provided by a surcharge on the refuse bills for residents in the hill area of the City. In 1997, the City Council-approved assessment district in the Berkeley hills area ended; however, the danger from a wildfire did not. The continued commitment of the residents to a fire-safe area is critical. Additional efforts are currently underway to construct a new fire station for the hill areas of the City, east of the Hayward fault. The objective of the current efforts is to develop a facility that will be able to respond to major disasters in these neighborhoods.

To fight fires effectively, adequate water pressure, supply, and delivery must be available. While water pressure is generally adequate throughout the city, fire-fighting capability can be hampered by supply and pressure limitations in particular water pressure zones. Moreover, an earthquake can easily sever water lines in the area. Several areas in the East Bay hills can produce flame fronts that cannot be controlled with water from hydrants, fire truck hoses, or helicopter buckets, or with retardant drops from air tankers, until the winds die down in the late afternoon. Compounding this threat is the fact that evacuation can be difficult, slow, and dangerous due to winding and narrow roadways in the hills.

If there were to be a major fire event in the City, there could be substantial damage to and interference with the City's right to use and occupy all or a portion of the Leased Property, which could result in Lease Payments being subject to abatement. See "- Abatement" above. See "THE LEASED PROPERTY" for a description of the structural design of the Leased Property.

Natural Gas Transmission Pipelines. On September 9, 2010 a Pacific Gas and Electric Company ("PG&E") high pressure natural gas transmission pipeline exploded in San Bruno, California, with catastrophic results, including the destruction of 38 homes. There are four similar transmission pipelines and numerous other types of pipelines owned, operated and maintained by PG&E located throughout the City. The primary transmission line in the city runs along 7th Street from across then entire City with several tributaries on Virginia Street, Allston Way, Parker Street, Carleton Street, Grayson Street, and Heinz Street.

PG&E's website (www.pge.com) provides information regarding its high pressure natural gas transmission pipelines and its long range natural gas transmission pipeline planning. This information is summarized below.

According to its website, PG&E has a comprehensive inspection and monitoring program to ensure the safety of its natural gas transmission pipeline system, and uses a risk management program that inventories each of the 20,000 segments within PG&E's natural gas transmission pipeline system and evaluates them against criteria such as:

- the potential for third party damage like dig-ins from construction,
- the potential for corrosion,

- the potential for ground movement, and
- the physical design and characteristics of the pipe segment.

PG&E has also indicated that it considers the proximity of its natural gas transmission pipelines to high density populations, potential reliability impacts and environmentally sensitive areas, and uses the data it collects to help plan and prioritize future work.

Based on all of these factors, PG&E determines which segments warrant further evaluation, monitoring or other future action. PG&E has created a list of the “Top 100” segments to help inform future work plans (although it should be noted that the pipeline that caused the explosion in the City of San Bruno was not on the Top 100 list). As conditions change from year to year, PG&E reevaluates the segments included on the list. This list can be found on PG&E’s website at: <http://www.pge.com>.

A pipeline segment may be placed into planning for further study and long-range planning based upon its risk for one of five factors:

- Potential for Third-Party Damage,
- Potential for Corrosion,
- Potential for Ground Movement,
- Physical Design and Characteristics, and
- Overall (did not score high in any one factor of the above factors, but scored moderately high in more than one factor).

As noted above, additional information may be found on PG&E’s website, specifically at <http://www.pge.com>.

To the City’s knowledge, as of the date hereof, none of the natural gas transmission pipelines on the PG&E Top 100 list are located within the City. However, as noted above, the pipeline that caused the explosion in the City of San Bruno was not on the Top 100 list.

The City is not able to independently confirm the information set forth above or the information contained on the PG&E website with respect to PG&E’s pipelines, and can provide no assurances as to its accuracy or completeness. Further, the City can provide no assurances as to the condition of PG&E pipelines in the City, or predict the extent of the damage to the surrounding property that would occur if a PG&E pipeline located within the City were to explode.

Hazardous Substances

Discovery of hazardous substances on parcels within the City could impact the City’s ability to pay Lease Payments and other payments due under the Leases.

In general, the owners and operators of a property may be required by law to remedy conditions of the property relating to releases or threatened releases of hazardous substances. The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as “**CERCLA**” or the “**Superfund Act**” is the most well known and widely

applicable of these laws, but California laws with regard to hazardous substances are also stringent and similar. Under many of these laws, the owner (or operator) is obligated to remedy a hazardous substance condition of property whether or not the owner or operator has any thing to do with creating or handling the hazardous substance.

The effect, therefore, should the Leased Property or any substantial amount of property within the City be affected by a hazardous substance, would be to reduce the marketability and value of the property by the costs of, and any liability incurred by, remedying the condition, since the purchaser, upon becoming an owner, will become obligated to remedy the condition just as is the seller. Such reduction in the value of the Leased Property could adversely impact the fair rental value of the Leased Property and potentially result in abatement of the Lease Payments. In addition, reduction in the value of property in the City as a whole could reduce property tax revenues received by the City and deposited in the general fund, which could significantly and adversely affect the ability of the City to make Lease Payments.

Limitations on Remedies Available; Bankruptcy

The enforceability of the rights and remedies of the Owners and the obligations of the City may become subject to the following: the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual equitable principles which may limit the specific enforcement under state law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of servicing a significant and legitimate public purpose.

The opinions of counsel, including Bond Counsel, delivered in connection with the issuance of the Bonds will be so qualified. Bankruptcy proceedings, or the exercising of powers by the federal or state government, if initiated, could subject the Owners to judicial discretion and interpretation of their rights in bankruptcy or otherwise and consequently may entail risks of delay, limitation, or modification of their rights.

Litigation

The City may be or become a party to litigation that has an impact on the City's General Fund. Although the City maintains certain insurance policies that provide coverage under certain circumstances and with respect to certain types of incidents (see " APPENDIX D, CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY; CITY FINANCIAL INFORMATION - Risk Management" for further information), the City cannot predict what types of liabilities may arise in the future. See also "CONCLUDING INFORMATION – Litigation."

State Law Limitations on Appropriations

Article XIII B of the California Constitution limits the amount that local governments can appropriate annually. The ability of the City to pay Lease Payments and other payments due under the Leases may be affected if the City should exceed its appropriations limit. The State may increase the appropriation limit of cities in the State by decreasing the State's own appropriation limit. The City does not anticipate exceeding its appropriations limit. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Article XIII B of the State Constitution" above.

Property Tax Allocation by the State; Changes in Law

The responsibility for allocating general property taxes was assigned to the State by Proposition 13, which stated that property taxes were to be allocated "according to law." The formula for such allocation was contained in Assembly Bill 8 ("**AB 8**"), adopted in 1978, which allocates property taxes among the among cities, counties, and school districts. The formulas contained in AB 8 were designed to allocate property taxes in proportion to the share of property taxes received by a local entity prior to Proposition 13. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS, Article XIII A of the State Constitution."

Beginning in its fiscal year 1992-93, in response to its own budgetary shortfalls, the State began to permanently redirected billions of dollars of property taxes Statewide from cities, counties, and certain special districts to schools and community college districts. These redirected funds reduced the State's funding obligation for K-14 school districts by a commensurate amount. In response, Proposition 1A of 2004, approved by State voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain limitations. However, pursuant to Proposition 1A and beginning in Fiscal Year 2008-09, the State could, upon gubernatorial proclamation of fiscal hardship and following approval of two-thirds of both houses of the legislature, and it did, shift to schools and community colleges up to 8% of local government ad valorem property tax revenues, which amount must be repaid, with interest, within three years. The State could also approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county. In November 2010, State voters approved Proposition 22, which amends the State's constitution to eliminate the State's authority to temporarily shift additional ad valorem property taxes from cities, counties and special districts to schools, among other things. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS, Proposition 1A; Proposition 22." The state last passed a redirection or property tax shift applicable to fiscal years 2004-05 and 2005-06.

No assurance can be given that the State, the Counties' or the City electorate will not at some future time adopt initiatives, or that the State Legislature will not enact legislation that will amend the laws of the State in a manner that could result in a reduction of the City's property tax allocations or its other revenues and therefore a reduction of the funds legally available to the City to pay Lease Payments and other payments due under the Leases. See, for example, "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Article XIIC and Article XIID of the State Constitution."

The State, the Counties' or the City electorate might also adopt initiatives, or the State Legislature might enact legislation that will amend the laws of the State in a manner that could result in an increase of the City's property tax allocations or its other revenues. A California Government Performance and Accountability Initiative (#11-0068) is likely to qualify for the November 6, 2012 ballot in California as an combined initiated constitutional amendment and state statute. If enacted, this initiative will, among other things: (i) establish a two-year State budget cycle. (ii) prohibit the Legislature from "creating expenditures of more than \$25 million unless offsetting revenues or spending cuts are identified," (iii) permit the Governor to cut the budget unilaterally during declared fiscal emergencies if the Legislature fails to act, (iv) require performance goals in State and local budgets. and (v) give counties the power to alter state statutes or regulations related to spending unless the Legislature or a state agency vetoes changes within 60 days. Specifically, through "Community Strategic Action Plans," the initiative could grant authority for and incentivize local governments to coordinate and share resources

for program and service delivery, and could enable local governments to modify property and sales taxes allocated to and between them (other than those taxes allocated to schools). The State Legislative Analyst's Office estimates that such an initiative could increase local revenues by approximately \$200 million annually, beginning in 2013-14.

Loss of Tax-Exemption

As discussed under the caption "TAX MATTERS," interest on the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the Bonds were issued, as a result of future acts or omissions of the Authority or the City in violation of their respective covenants in the Lease and the Indenture. Should such an event of taxability occur, the Bonds are not subject to special redemption and will remain Outstanding until maturity or until redeemed under other provisions set forth in the Indenture.

Secondary Market for Bonds

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that any Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

No assurance can be given that the market price for the Bonds will not be affected by the introduction or enactment of any future legislation, or changes in interpretation of existing law.

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TAX MATTERS

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes, such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Tax Code that must be satisfied subsequent to the issuance of the Bonds in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds.

If the initial offering price to the public (excluding bond houses and brokers) at which a Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which each Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "original issue premium" for purposes of federal income taxes and State of California personal income taxes. De minimis original issue discount is disregarded.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straightline interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such Bond to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such Bonds under federal individual and corporate alternative minimum taxes.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond's maturity date or its call date). The amount of original issue premium amortized each year reduces the adjusted basis of the owner of the Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straightline interpolations between compounding dates). Amortized Bond premium is not deductible for federal income tax purposes. Owners of Premium Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect

to State of California personal income tax and federal income tax consequences of owning such Bonds.

CERTAIN LEGAL MATTERS

Jones Hall, A Professional Law Corporation, Bond Counsel, will render one or more opinions with respect to the validity of the Bonds, the form of which opinion is set forth in Appendix E. Certain legal matters will also be passed upon for the City and the Authority by Jones Hall, as Disclosure Counsel. Certain legal matters will be passed upon for the Authority and the City by the City Attorney.

LITIGATION

To the best knowledge of the City, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Leases, the Site Leases or the Indenture, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by the Leases, the Site Leases or the Indenture, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under the Leases.

FINANCIAL STATEMENTS

Caporicci & Larson, Inc., A Subsidiary of Marcum LLP, Certified Public Accounts, San Francisco, California (the "**Auditor**"), audited the financial statements of the City for the Fiscal Year ended June 30, 2011. The Auditor's examination was made in accordance with generally accepted auditing standards and Governmental Auditing Standards, issued by the Comptroller General of the United States. See "APPENDIX B – Audited Financial Statements of the City for Fiscal Year Ended June 30, 2011."

The City has not requested nor did the City obtain permission from the Auditor to include the audited financial statements as an appendix to this Official Statement. Accordingly, the Auditor has not performed any post-audit review of the financial condition or operations of the City.

RATING

It is anticipated that, on the Closing Date, Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. ("**S&P**"), will assign its municipal bond rating of " _____ " to the Bonds.

This rating reflects only the view of the rating agency, and an explanation of the significance of this rating, and any outlook assigned to or associated with this rating, should be obtained from the rating agency.

Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. The City and the Authority have provided certain additional information and materials to the rating agency (some of which does not appear in this Official Statement).

There is no assurance that this rating will continue for any given period of time or that this rating will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of the rating agency, circumstances so warrant. Any such downward revision or withdrawal of any rating on the Bonds may have an adverse effect on the market price or marketability of the Bonds.

CONTINUING DISCLOSURE

The City will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City by not later than March 1 after the end of each Fiscal Year of the City (currently June 30th), commencing with the report for the 2012 Fiscal Year (the "**Annual Report**"), and to provide notices of the occurrence of certain enumerated events, if material. All Annual Reports shall be filed with the Municipal Securities Rulemaking Board (the "**MSRB**"). The specific nature of the information to be contained in the Annual Report or the notices of material events is summarized under the caption "APPENDIX E – Form of Continuing Disclosure Certificate." These covenants have been made in order to assist the purchaser of the Bonds in complying with S.E.C. Rule 15c2- 12(b)(5) (the "**Rule**").

The City and its related governmental entities have previously entered into numerous disclosure undertakings under the Rule in connection with the issuance of long-term obligations (See "APPENDIX B – Comprehensive Annual Financial Report for the City for the Year Ending June 30, 2011. Notes to Financial Statements, Note 6"). To assist it in meeting its continuing disclosure obligations, the City has retained The Bank of New York Mellon Trust Company, N.A., as its trustee and dissemination agent (the "**Dissemination Agent**") for the past five years. The Dissemination Agent, the City and the City's affiliated governmental entities have not, on a handful of occasions during the past five years, fully complied, in all material respects, with the City's disclosure undertakings.

Specifically, during the last five years:

(i) The audited financial statements and annual reports with respect to several series of the City's bonds (or series of bonds of the City's affiliated governmental entities), were submitted to the Dissemination Agent, but do not appear on the Electronic Municipal Market Access ("**EMMA**") evidencing proper filing with the MSRB (although references to the attempted filing of such financial statements and annual reports can be found there). Additionally, the Dissemination Agent failed to file the audited financial statements and the annual reports for several of series of the City's bonds on a timely basis and did not provide proper notice of delay.

(ii) The Dissemination Agent, the City and the City's affiliated governmental entities did not file material event notices regarding changes to the ratings of certain of

the City's obligations as a result of changed underlying bond ratings and downgrades of the ratings of bond insurance companies that insured their bonds.

Supplemental annual reports, notices of the rating changes and filings to correct all of known filing errors made by the Dissemination Agent, the City and the City's affiliated governmental entities in their attempts to fully comply with the City's continuing disclosure undertakings have been made as of the date hereof.

In order to ensure future compliance with the City's continuing disclosure undertakings, the City and the City's affiliated governmental entities will continue to work with the Dissemination Agent and they may include in their audited financial statements all financial and operating data that is required to be included in their annual reports, with the goal of filing only one document for each obligation on an annual basis.

UNDERWRITING

_____ (the "**Underwriter**"), has entered into a bond purchase agreement with the Authority under which it will purchase the Bonds at a price of \$_____ (equal to the par amount of the Bonds, plus original issue premium of \$_____, and less an Underwriter's discount of \$_____).

The Underwriter will be obligated to take and pay for all of the Bonds if any are taken. The Underwriter intends to offer the Bonds to the public at the offering prices set forth on the inside cover page of this Official Statement. After the initial public offering, the public offering price may be varied from time to time by the Underwriter.

PROFESSIONAL SERVICES

In connection with the issuance of the Bonds, all or a portion of the fees payable to the following professionals involved in the offering are contingent upon the issuance and delivery of the Bonds: Jones Hall, A Professional Law Corporation, San Francisco, California, as Bond Counsel and Disclosure Counsel; NHA Advisors, LLC, as Financial Advisor; and The Bank of New York Mellon Trust Company, N.A., Los Angeles, California, as Trustee.

EXECUTION

The execution of this Official Statement and its delivery have been authorized by the Authority Commission of the Authority and the City Council of the City.

BERKELEY JOINT POWERS FINANCING
AUTHORITY

By : _____
Executive Director

CITY OF BERKELEY

By : _____
City Manager

APPENDIX A
SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

APPENDIX B

**AUDITED FINANCIAL STATEMENTS OF THE CITY
FOR THE FISCAL YEAR ENDED JUNE 30, 2011**

APPENDIX C

FORM OF CONTINUING DISCLOSURE CERTIFICATE

\$ _____ *

BERKELEY JOINT POWERS FINANCING AUTHORITY 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing)

This CONTINUING DISCLOSURE CERTIFICATE (this “**Disclosure Certificate**”) is executed and delivered by the City of Berkeley (the “**City**”), on behalf of itself and the Berkeley Joint Powers Financing Authority (the “**Authority**”), in connection with the issuance of the 2012 Refunding Lease Revenue Bonds captioned above (the “**Bonds**”). The Bonds are being executed and delivered pursuant to an Indenture of Trust dated as of October 1, 2012 (the “**Indenture**”) by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee for the Bonds (the “**Trustee**”).

The City covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriters in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Annual Report Date*” means the date that is nine months after the end of the City’s fiscal year (currently March 31 based on the City’s fiscal year end of June 30).

“*Dissemination Agent*” shall mean, initially, the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designed in writing by the City and which has been filed with the then current Dissemination Agent a written acceptance of such designation.

“*Fiscal Year*” means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve-month period selected and designated by the City as its official Fiscal Year period under a Certificate of the City filed with the Trustee.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

* Preliminary, subject to change.

“*Official Statement*” means the final official statement executed by the City in connection with the issuance of the Bonds.

“*Participating Underwriters*” means the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“*Rule*” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as it may be amended from time to time.

“*Significant Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing March 31, 2013, provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Significant Event under Section 5(c). The City shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) to the MSRB, in an electronic format as prescribed by the MSRB, a notice in substantially the form attached as Exhibit A.

(c) With respect to each Annual Report, the Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Annual Reports. The City’s Annual Report shall contain or incorporate by reference the following:

(a) The City’s audited financial statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to

time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Unless otherwise provided in the audited financial statements filed on or before the Annual Report Date, financial information and operating data with respect to the City for the preceding Fiscal Year, substantially similar to that provided in the corresponding tables in the Official Statement:

(i) summary of investments held in the City's investment portfolio for the most recently-completed fiscal year, including market value, book value and a description of any investments that do not comply with the City's investment policies;

(ii) general fund budget for the fiscal year during which the annual report is filed;

(iii) general fund balance sheet for the most recently-completed fiscal year;

(iv) general fund summary of revenues and expenditures for the most recently-completed fiscal year;

(v) general fund tax revenues by source for the most recently-completed fiscal year;

(vi) assessed valuation of property in the City for the most recently-completed fiscal year and, to the extent the City is no longer on the Teeter Plan (or its equivalent) and such information is available from the County, information about property tax levies and collections for the most recently completed fiscal year;

(vii) taxable transactions in the City for the most recently-completed fiscal year; and

(viii) description of the City's outstanding general fund debt and lease obligations as of the end of the most recently-completed fiscal year, including long-term general fund obligations.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following Significant Events with respect to the Bonds:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) Modifications to rights of security holders, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the securities, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the City or other obligated person;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the City or an obligated person, or the sale of all or substantially all of the assets of the City or an obligated person (other than in the ordinary course of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) Whenever the City obtains knowledge of the occurrence of a Significant Event, the City shall, or shall cause the Dissemination Agent (if not the City) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Significant Event. Notwithstanding the foregoing, notice of Significant Events described in subsections (a)(8) and

(9) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected Bonds under the Indenture.

(c) The City acknowledges that the events described in subparagraphs (a)(2), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13), and (a)(14) of this Section 5 contain the qualifier “if material.” The City shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that the City determines the event’s occurrence is material for purposes of U.S. federal securities law.

(d) For purposes of this Disclosure Certificate, any event described in paragraph (a)(12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The City’s obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Significant Event under Section 5(c).

Section 8. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any Dissemination Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days’ written notice to the City. Initially, the Trustee will act as dissemination hereunder.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the Bonds in the manner provided in the Indenture for amendments to the Indenture with the consent of

holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative.

The Dissemination Agent shall not be obligated to enter into any amendment increasing or affecting its duties or obligations hereunder.

A notice of any amendment made pursuant to this Section 9 shall be filed in the same manner as for a Significant Event under Section 5(c).

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Significant Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Significant Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Significant Event.

Section 11. Default. If the City fails to comply with any provision of this Disclosure Certificate, the Participating Underwriters or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. (a) Article VIII of the Indenture is hereby made applicable to this Disclosure Certificate as if this Disclosure Certificate were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall be entitled to the protections and limitations from liability afforded to the Trustee thereunder. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of its powers and duties

hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it by the City hereunder, and shall not be deemed to be acting in any fiduciary capacity for the City, the Bond holders or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriters and the holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 14. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: October __, 2012

CITY OF BERKELEY

By : _____
City Manager

ACKNOWLEDGED AND ACCEPTED

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Dissemination
Agent

By: _____
Authorized Representative

EXHIBIT A

NOTICE OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Berkeley Joint Powers Financing Authority
Name of Issue: \$_____ * 2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancings)
Date of Issuance: October __, 2012

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Certificate dated October __, 2012. The City anticipates that the Annual Report will be filed by _____.

Dated: October __, 2012

DISSEMINATION AGENT:

By: _____
Its: _____

APPENDIX D

CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY; CITY FINANCIAL INFORMATION

Introduction

The City of Berkeley, California (the “City”) is located in Alameda County (the “County”) on the east side of the San Francisco Bay, approximately 10 miles northeast of San Francisco. The City encompasses a total area of approximately 19 square miles and had an estimated January 1, 2012 population of 114,821, giving it the highest population density of any city in the East Bay. The City is defined to a large degree, both culturally and economically, by the presence of the University of California campus located on the eastern side of the City. The University of California is a major component of the City's economy, employing approximately 14,000 full and part-time workers.

The City is among the oldest in California. The City was founded in 1864, incorporated as a town in 1878, and incorporated as a City in 1909. The City's charter was adopted in 1895.

Population

Population figures for the City, the County and the State for the last five years are shown in the following table.

CITY OF BERKELEY Population Estimates As of January 1

Year	City of Berkeley	County of Alameda	State of California
2008	109,762	1,484,085	36,704,375
2009	110,982	1,497,799	36,966,713
2010	112,363	1,509,240	37,223,900
2011	113,925	1,517,756	37,427,946
2012	114,821	1,532,137	37,678,563

Source: State Department of Finance estimates (as of January 1).

City Government

The City operates under a Council-Manager form of government. The City is governed by a nine-member City Council, eight of whom are elected by district, plus the Mayor, whom is elected on a city-wide basis. The Mayor and the City Council members serve four-year terms. The Council appoints a City Manager who is responsible for daily administration of City affairs, preparation and submission of the annual budget under the direction of the Mayor and the City Council for the Mayor's submission to the City Council. The City Manager appoints a Director of Finance to supervise the City's financial affairs. The Director of Finance also serves as the City's Treasurer.

The City Council also appoints the City Attorney. The City Clerk and Director of Finance are appointed by the City Manager subject to City Council approval. The City Auditor is elected at the same time as the Mayor.

<u>Member</u>	<u>District</u>	<u>Term Expires</u>
Tom Bates	Mayor	11/30/2012
Linda Maio	1	11/30/2014
Darryl Moore	2	11/30/2012
Maxwell Anderson	3	11/30/2012
Jesse Arreguín	4	11/30/2014
Laurie Capitelli	5	11/30/2012
Susan Wengraf	6	11/30/2012
Kriss Worthington	7	11/30/2014
Gordon Wozniak	8	11/30/2014

CITY FINANCIAL INFORMATION

Accounting Policies and Financial Reporting

The accounts of the City are organized on the basis of funds and account groups, to account for different activities. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures or expenses, as appropriate. Government resources are allocated to and accounted for in individual funds based upon the purposes for which they are to be spent and the means by which the spending activities are controlled. The City's general fund and other governmental fund types use the modified accrual basis of accounting. All of the City's other funds, including proprietary fund types and fiduciary fund types use the accrual basis of accounting. The basis of accounting for all funds is more fully explained in the "Notes to the Financial Statements" contained in Appendix B.

The City Council employs, at the beginning of each fiscal year, an independent certified public accountant who, at such time or times as specified by the City Council, at least annually, and at such other times as he or she shall determine, examines the combined financial statements of the City in accordance with generally accepted auditing standards, including such tests of the accounting records and such other auditing procedures as such accountant considers necessary. As soon as practicable after the end of the fiscal year, a final audit and report is submitted by such accountant to the City Council and a copy of the financial statements as of the close of the fiscal year is published.

The City, all its funds and the funds of certain other component entities of the City are audited annually by a certified public accounting firm. The firm of Caporicci & Larson, Inc., A Subsidiary of Marcum LLP, Certified Public Accounts, San Francisco, California, is the City's current auditor (the "**Auditor**"). The comprehensive annual financial report of the City for fiscal year 2009-10 is attached hereto as Appendix B. *The City's financial statements are public documents and are included within this Official Statement without the prior approval of the Auditor. Accordingly, the Auditor has not performed any post-audit of the financial condition of the City.*

The Governmental Accounting Standards Board ("**GASB**") published its Statement No. 34 "Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments" on June 30, 1999. Statement No. 34 provides guidelines to auditors, state and local governments and special purpose governments such as school districts and public

utilities, on new requirements for financial reporting for all governmental agencies in the United States. Generally, the basic financial statements and required supplementary information should include (i) Management's Discussion and Analysis; (ii) financial statements prepared using the economic measurement focus and the accrual basis of accounting and fund financial statements prepared using the current financial resources measurement focus and the modified accrual method of accounting and (iii) required supplementary information. The City's financial statements are prepared in conformance with the requirements of Statement No. 34.

Comparative Financial Statements

The following tables provide a five-year history of the City's Comparative Balance Sheet, General Fund revenues, expenditures, transfers, and ending fund balances.

CITY OF BERKELEY GENERAL FUND BALANCE SHEET (As of June 30)

	Actual, Audited <u>2007-08</u>	Actual, Audited <u>2008-09</u>	Actual, Audited <u>2009-10</u>	Actual, Audited <u>2010-11</u>	Actual, Unaudited <u>2011-12</u>
ASSETS:					
Cash and investments in treasury*	\$62,483,357	\$62,156,359	\$56,902,860	\$28,430,832	\$78,779,024
Receivables (net of allowance where applicable):					
Accounts	4,639,450	3,085,498	7,539,275	6,964,852	8,608,747
Interest	1,611,253	2,013,751	1,353,780	1,320,269	816,560
Taxes	5,235,740	4,913,871	4,998,911	5,915,953	5,390,148
Due from other funds	9,534,271	7,155,244	9,314,083	9,165,640	6,776,538
Advance to other funds					
Due from Components Units	211,243	247,077	201,829	218,555	179,629
Notes receivable	2,925,580	2,825,135	3,313,193	3,357,980	3,438,803
Other	113,268	124,769	490,900	1,517,817	2,667,933
Total assets	<u>86,754,162</u>	<u>82,521,705</u>	<u>84,114,831</u>	<u>56,891,898</u>	<u>106,657,110</u>
LIABILITIES:					
Accounts payable	1,637,048	2,089,909	1,749,133	1,851,560	6,868,139
Accrued salaries and wages	4,848,335	5,319,269	5,849,849	6,245,234	2,368,020
Deposits held	306,768	490,289	477,608	458,928	603,326
Deferred revenue	4,830,914	2,991,872	5,777,327	4,832,951	6,755,525
Other liabilities	1,828,455	1,638,942	1,973,192	1,853,149	946,039
Tax and revenue anticipation notes*	25,000,000	25,000,000	25,000,000	--	--
Total liabilities	<u>38,451,521</u>	<u>37,530,282</u>	<u>40,827,109</u>	<u>15,241,822</u>	<u>17,541,049</u>
FUND BALANCES					
Reserved for:					
Encumbrances/Assigned to	3,693,269	2,765,499	2,762,840	2,271,366	2,343,499
Due from and advances to other funds	9,534,271	7,155,244	--	--	--
Due from Component Units	--	247,077	--	--	--
Notes receivable/Nonspendable	2,925,580	2,825,135	3,313,193	3,357,980	3,438,803
Lawsuits	--	--	--	--	--
Shortfall for utility undergrounding	--	--	--	--	--
Unreserved, report in:					
General fund	32,149,521	31,998,467	37,211,689	36,020,731	33,333,759
Total fund balances	<u>48,302,641</u>	<u>44,991,423</u>	<u>43,287,722</u>	<u>41,650,076</u>	<u>39,116,061</u>
Total liabilities and fund balances	<u>\$86,754,162</u>	<u>\$82,521,705</u>	<u>\$84,114,831</u>	<u>\$56,891,898</u>	<u>\$56,657,110</u>

Source: City of Berkeley, Comprehensive Annual Financial Reports and City of Berkeley

* Balances for fiscal years 2010-11 and 2011-12 are net of TRAN.

CITY OF BERKELEY
STATEMENT OF GENERAL FUND
REVENUES, EXPENDITURES AND BALANCES
(Fiscal Year Ending June 30)
(Dollar amounts in thousands) ⁽¹⁾

	Actual, Audited <u>2007-08</u>	Actual, Audited <u>2008-09</u>	Actual, Audited <u>2009-10</u>	Actual, Audited <u>2010-11</u>	Actual, Unaudited <u>2011-12</u>	Budgeted <u>2012-13</u>
REVENUES:						
Taxes	\$100,442	\$97,988	\$96,351	\$100,584	\$102,392	\$106,555
Licenses and Permits	272	343	742	464	682	519
Subvention and Grants/Intergovernmental	8,617	9,051	9,165	9,281	9,023	9,788
Service Fees	6,138	7,214	6,464	7,628	7,736	
Fines and Forfeitures	10,625	10,553	10,805	10,135	9,521	7,767
Rents	101	113	127	122	116	9,866
Franchises	1,732	1,848	1,915	1,772	1,540	89
Interest	6,323	8,746	5,434	4,256	1,019	1,805
Indirect Cost Reimbursements	5,109	5,388	--	--	--	4,000
Other	4,949	1,053	1,160	883	879	401
TOTAL REVENUES	144,307	142,296	132,162	135,126	132,908	140,780
EXPENDITURES:						
General Government	29,993	31,563	26,743	27,108	29,784	62,593
Public Safety	73,425	74,982	76,814	80,465	81,662	82,384
Highways and Streets	1,513	2,204	1,728	1,665	1,796	1,555
Health and Human Services	9,513	10,291	6,870	6,630	6,148	6,620
Culture-Recreation	6,113	5,952	5,551	5,950	5,225	5,327
Community Development	3,347	3,661	6,952	6,475	6,253	6,677
Economic Development	1,790	2,200	2,199	1,737	1,877	1,921
Debt Service	1,306	1,033	1,150	258	186	200
Transfers Out/Other	17,354	--	--	--	--	--
TOTAL EXPENDITURES	144,354	131,885	128,006	130,289	132,931	137,267
Excess Revenues Over (Under) Expenditures	(47)	10,411	4,156	4,837	(23)	3,513
Transfers In(out)/Other	--	(13,238)	(5,913)	(6,477)	(2,511)	(3,781)
Fund Balance, July 1	45,725	48,303	44,991	43,288	41,650	39,116
Prior Period Adjustment	2,625	(485)	53	--	--	--
Net change in fund balances	(47)	(2,826)	(1,756)	(1,638)	(2,534)	(268)
Fund Balance, June 30	\$48,303	\$44,991	\$43,288	\$41,650	\$39,116	\$38,848

Source: City of Berkeley, Comprehensive Annual Financial Reports; City of Berkeley for 2012-13 Budget; City of Berkeley.
(1) Totals may not add due to rounding.

Budgetary Process and Administration

The City employs a two-year budget process. In year one of the biennial budget cycle, the City Council formally adopts authorized appropriations for the first fiscal year and approves “planned” appropriations for the second fiscal year. In year two, the City Council considers revisions and formally adopts authorized appropriations for the second fiscal year. Although the budget cycle covers a two-year period, the City Charter requires that the City Council adopt an annual appropriations ordinance for each budget year.

From about January to May of each year, the City Council meets in public to discuss policies and priorities for the upcoming budget. The City Manager prepares a proposed budget based on input from department heads, and presents this to the City Council by the first Monday in May of a budget year or as fixed by the City Council. The City also maintains additional budgetary controls to ensure compliance with the annual appropriated budget. The City Manager is authorized to transfer budgeted amounts within funds as deemed necessary to meet the City’s needs. However, revisions that alter the total budget or move amounts from one fund to another must be approved by the City Council.

Revenues and expenditures relating to the City’s general governmental operations are budgeted and accounted for in the City’s general fund, including public safety, highways and streets, health and welfare, culture and recreation, community development, housing and economic development. General taxes and fees support most of these activities. The “business” or proprietary activities of the City are accounted for in each of eight enterprise funds, which include those established for Refuse Collection, Marina Operations, Sanitary Sewers, Clean Storm Water, Permit Service Center, Off-Street Parking, Parking Meter, and Building Purchases & Management. These activities are intended to be completely or largely self-supporting through user fees and charges. The balance of this “CITY FINANCIAL INFORMATION” section is concerned with the operations and performance of the City’s General Fund, unless otherwise noted.

State Budget and its Impact on the City

Set forth in the following paragraphs are descriptions of the State budget process, the current State budget situation, and the potential impacts on the City.

The Budget Process. Through the State budget process, the State can enact legislation that significantly impacts the source, amount and timing of the receipt of revenues by local agencies, including the City. As in recent years, State budget deficits can result in legislation that adversely impacts local agency budgets.

The State’s fiscal year begins on July 1 and ends on June 30. The annual budget is proposed by the Governor by January 10 of each year for the next fiscal year (the “**Governor’s Budget**”). Under State law, the annual proposed Governor’s Budget cannot provide for projected expenditures in excess of projected revenues and balances available from prior fiscal years. Following the submission of the Governor’s Budget, the Legislature takes up the proposal.

Under the State Constitution, money may be drawn from the Treasury only through an appropriation made by law. The primary source of the annual expenditure authorizations is the Budget Act as approved by the Legislature and signed by the Governor. Prior to the November 2, 2010 California General Election, the Budget Act required approval by a two-thirds majority

vote of each House of the Legislature. On the November 2, 2010, California voters passed Proposition 25, which amended this legislative vote requirement to a simple majority. The Budget Act must be approved by a two-thirds majority vote of each House of the Legislature. The Governor may reduce or eliminate specific line items in the Budget Act or any other appropriations bill without vetoing the entire bill. Such individual line item vetoes are subject to override by a two-thirds majority vote of each House of the Legislature.

Appropriations also may be included in legislation other than the Budget Act. Bills containing appropriations (except for K-14 education) must be approved by a two-thirds majority vote in each House of the Legislature and be signed by the Governor. Bills containing K-14 education appropriations only require a simple majority vote. Continuing appropriations, available without regard to fiscal year, may also be provided by statute or the State Constitution.

Funds necessary to meet an appropriation need not be in the State Treasury at the time such appropriation is enacted; revenues may be appropriated in anticipation of their receipt.

Certain information about the State budgeting process and the State Budget is available through several State of California sources. A convenient source of information is the State's website, where recent official statements for State bonds are posted. The references to internet websites shown below are shown for reference and convenience only; the information contained within the websites has not been reviewed by the City and is not incorporated in this Official Statement by reference.

The California State Treasurer's Internet home page at www.treasurer.ca.gov, under the heading "Financial Information," posts the State's audited financial statements. In addition, the "Financial Information" section includes the State's Rule 15c2-12 filings for State bond issues. The "Financial Information" section also includes the "Overview of the State Economy and Government, State Finances, State Indebtedness, Litigation" from the State's most current Official Statement, which discusses the State budget and its impact on school districts.

The California Department of Finance's Internet home page at www.dof.ca.gov, under the heading "California Budget," includes the text of proposed and adopted State Budgets.

The State Legislative Analyst's Office the ("LAO") prepares analyses of the proposed and adopted State budgets. The analyses are accessible on the Legislative Analyst's Internet home page at www.lao.ca.gov under the heading "Products."

The State has not entered into any contractual commitment with the City or the owners of the Notes to provide State budget information to the City or the owners of the Notes. Although the City believes the State sources of information listed above are reliable, the City assumes not responsibility for the accuracy of the State budget information set forth or referred to in this Official Statement.

Tax Shifts and Triple Flip. Assembly Bill No. 1755 ("**AB 1755**"), introduced March 10, 2003 and substantially amended June 23, 2003, requires the shifting of property taxes between redevelopment agencies and schools. On July 29, 2003, the Assembly amended Senate Bill No. 1045 to incorporate all of the provisions of AB 1755, except that the Assembly reduced the amount of the required the shift away from the Education Revenue Augmentation Fund ("**ERAF**") to \$135 million. Legislation commonly referred to as the "Triple Flip," was approved by the voters on March 2, 2004, as part of a bond initiative formally known as the "California Economic Recovery Act." This act authorized the issuance of \$15 billion in bonds to finance the 2002-03 and 2003-04 State budget deficits, which are payable from a fund established by the

redirection of tax revenues through the “Triple Flip.” Under the “Triple Flip,” one-quarter of local governments’ 1% share of the sales tax imposed on taxable transactions within their jurisdiction are redirected to the State. In an effort to eliminate the adverse impact of the sales tax revenue redirection on local governments, the legislation then redirects property taxes in the ERAF to local governments. Because the ERAF monies were previously earmarked for schools, the legislation provides for schools to receive other State general fund revenues. The swap of sales taxes for property taxes will terminate once the deficit financing bonds are repaid, which is currently expected to occur by 2016.

Information on State Economic Challenges, Prior Year State Budgets and Related Events. The State’s financial condition and budget policies affect communities and local public agencies throughout California. The State of California is experiencing significant financial and budgetary stress. Exacerbating the State’s challenges, as the State entered recession in 2008, annual revenues generally were less than annual expenses, creating a “structural” budget deficit. This structural deficit is due in part to overreliance on temporary budgetary remedies in prior State Budget years, including one-time revenues, internal borrowing, payment deferrals, accounting shifts and expenditure reduction proposals that have not materialized.

In recent years, the State Budget was also, repeatedly, not passed and signed in a timely manner. The City’s budget has, generally, been revised after the delivery of delayed State Budgets to reflect necessary changes in revenues and expenditures. Delays in the delivery of State budgets cause an element of uncertainty for the City and its Finance Department. Delayed payments from the State to the City, which are more common during periods in which the State faces economic challenges, also subject the City to additional risk, possibly causing the City to increase the size or frequency of its cash flow borrowings, or to borrow earlier in the fiscal year, with concurrent, market-contingent, borrowing costs for the City.

In recent years, Governor Edmund G. Brown Jr. has also employed a strategy of proposing revenue raising measures coupled with automatic expenditure and service cuts, which cuts go into effect if the revenue raising measures are not approved by the State Legislature or State voters, into his State budget packages. The State’s 2011-12 Budget relied on \$4 billion of additional tax revenue, which when not realized, automatically triggered nearly \$1 billion further cuts to universities, welfare, courts and schools (the “**Trigger Cuts**”). Unpredictability surrounding whether, when and which proposed Trigger Cuts may be implemented subject the City to additional risk and may prompt even further City budget revisions,

The 2011-12 Budget was also premised on \$2.8 billion in deferrals to K-12 schools and community colleges and \$1.7 billion to be directed from State redevelopment agency funds pursuant to ABx1 27. ABx1 27 was passed together with ABx1 26, which restricted redevelopment agency actions to create new debt and then dissolved them. On December 29, 2011, the State Supreme Court issued its decision in *California Redevelopment Assoc. v. Matosantos*, a case brought to determine the constitutionality of ABx1 26 and ABx1 27, ruling that ABx1 26 was constitutional and ABx1 27 was not. By February 1, 2012 all redevelopment agencies were to cease operations and dismantle, and no additional payments from communities with redevelopment agencies to fund school expenditures are thereafter constitutionally permissible. [As a consequence of ABx1 26, the City has absorbed costs associated with economic development that were previously funded through its redevelopment agency. The administrative costs of supporting the business of the Successor Agency, which became empowered to act with respect to prior redevelopment matters, will be paid from former tax increment pursuant to the legislation.]

2012-13 State Budget. On June 15, 2012, the Legislature passed a \$92 billion General Fund State Budget that closed the State's then-remaining \$15.7 billion deficit and rebuilt a \$1 billion General Fund reserve. The 2012-13 State Budget relies on a plan to submit to the voters at a regular election in November 2012 a \$6.9 billion tax increase, including a higher rate for personal income over \$250,000 and a half-cent sales tax hike. If the voters do not approve such revenue-raising measures, the 2012-13 State Budget specifies \$6 billion in Trigger Cuts to occur, which amount of Trigger Cuts is \$2 billion greater than the possible Trigger Cuts contained in the 2011-12 Budget. \$5.9 billion of the planned Trigger Cuts will affect public education funding in the State (with \$5.4 billion of Trigger Cuts affecting future Proposition 98 funding, and the University of California and Cal State systems each experiencing \$250 million in Trigger Cuts). The 2012-13 Budget also contains reductions in expenditures from prior years spending totaling \$8.1 billion, including reductions caused by elimination of the Healthy Families program and by reforms relating to the CalWORKs, Medi-Cal, Judiciary and Cal Grant programs. The 2012-13 Budget expects \$1.5 billion in savings will be generated as the result of the transfer of cash assets previously held by redevelopment agencies to cities, counties and special districts to fund core public services and to schools to offset State General Fund costs. An additional \$1.9 billion in savings will arise due to prepayment of the State's Proposition 98 funding as required by a court settlement. Governor Brown signed the 2012-13 Budget on June 27, 2012.

The complete 2012-13 State Budget is available from the California Department of Finance website at www.dof.ca.gov. The City can take no responsibility for the continued accuracy of this internet address or for the accuracy, completeness or timeliness of information posted there, and such information is not incorporated in this Official Statement by such reference. The information referred to above should not be relied upon in making an investment decision with respect to the Notes.

The execution of 2012-13 Budget may be affected by numerous factors, including but not limited to: (i) national, State and international economic conditions, (ii) failure of the Governor's proposed revenue-generating initiatives at the November 2012 election, (iii) litigation risk associated with proposed spending reductions, (iv) failure to generate expected savings as a result of the transfer of cash assets previously held by redevelopment agencies and (v) other factors, all or any of which could cause the revenue and spending projections made in 2012-13 Budget to be unattainable. The City cannot predict the impact that the 2012-13 Budget, or subsequent budgets, will have on its own finances and operations. Additionally, the City cannot predict the accuracy of any projections made in the State's 2012-13 Budget.

See "- Redevelopment Agencies Dissolution" below for information about the impact on the City of the recent dissolution of redevelopment agencies.

Future State Budgets. The City cannot predict what actions will be taken in future years by the State Legislature and the Governor to address the State's current or future budget deficits. Future State budgets are affected by national and state economic conditions, political conditions and other factors over which the City has no control. To the extent that the State budget process results in reduced revenues to the City, the City will be required to make adjustments to its budget. Decrease in such revenues may have an adverse impact on the City's ability to pay the Notes.

Ad Valorem Property Taxes

Tax Levies and Collections. Property taxes account for approximately 28% of the City's general fund revenues. Taxes are levied for each fiscal year on taxable real and personal property which is situated in the City as of the preceding January 1. A supplemental roll is developed when property changes hands, which produces additional revenue.

A ten percent penalty attaches to any delinquent payment for secured roll taxes. In addition, property on the secured roll with respect to which taxes are delinquent becomes tax-defaulted. Such property may thereafter be redeemed by payment of the delinquent taxes and the delinquency penalty, plus a redemption penalty to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to auction sale by the County Tax Collector.

In the case of unsecured property taxes, a 10% penalty attaches to delinquent taxes on property on the unsecured roll, and an additional penalty of 1.5% per month begins to accrue beginning November 1st of the fiscal year, and a lien is recorded against the Assesse. The taxing authority has four ways of collecting unsecured personal property taxes: (1) a civil action against the taxpayer; (2) filing a certificate in the office of the County Clerk specifying certain facts in order to obtain a judgment lien on specific property of the taxpayer; (3) filing a certificate of delinquency for recording in the County Recorder's office in order to obtain a lien on specified property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the Assesse.

The County levies (except for levies to support prior voter-approved indebtedness) and collects all property taxes for property falling within that county's taxing boundaries.

The following is a table summarizing the historical and current assessed valuation of the taxable property in the City.

CITY OF BERKELEY ASSESSED VALUATION 2002-03 TO 2011-12

<u>Fiscal Year</u>	<u>Local Secured</u>	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>	<u>Percent Change</u>
2002-03	7,646,957,900	2,463,388	391,087,713	8,040,509,001	7.02
2003-04	8,251,039,596	2,526,768	402,174,941	8,655,741,305	7.65
2004-05	8,687,909,495	3,075,097	571,603,260	9,262,587,852	7.01
2005-06	9,499,976,877	2,520,396	574,192,669	10,076,689,942	8.79
2006-07	10,377,045,760	2,335,203	592,977,821	10,972,358,784	8.89
2007-08	11,160,531,045	1,324,910	606,785,227	11,768,641,182	7.26
2008-09	11,918,409,630	473,910	671,983,004	12,590,866,544	6.99
2009-10	12,085,578,735	473,910	720,264,455	12,806,317,100	1.71
2010-11	12,147,575,627	555,664	677,887,524	12,826,018,815	0.15
2011-12	12,525,929,662	555,664	667,789,011	13,194,274,337	2.87
2012-13	AVAILABLE END OF SEPT.				

Source: California Municipal Statistics, Inc.

The property tax levies and collections for the City for 2001-02 through 2010-11 are shown in the following table:

**CITY OF BERKELEY
SECURED TAX CHARGES AND DELINQUENCIES
2001-02 TO 2010-11
(Dollar amounts in thousands)**

Fiscal Year	Secured Tax Charge ⁽¹⁾	Amount Delinquent June 30	% Delinquent June 30
2001-02	22,855,012.30	559,616.90	2.45
2002-03	24,637,551.31	570,260.58	2.31
2003-04	25,985,291.16	515,310.65	1.98
2004-05	28,028,117.55	552,435.47	1.97
2005-06	30,573,949.35	684,004.33	2.24
2006-07	33,552,146.54	1,189,361.30	3.54
2007-08	36,038,297.51	1,680,289.97	4.66
2008-09	38,438,858.24	1,757,281.78	4.57
2009-10	38,834,067.28	1,222,174.35	3.15
2010-11	38,858,160.99	937,557.29	2.41
2011-12	[AVAILABLE END OF SEPT]		

⁽¹⁾ 1% General Fund apportionment.
Source: California Municipal Statistics, Inc.

Tax Rates. The table below shows historical property tax rates within the City:

**CITY OF BERKELEY
TYPICAL TAX RATE PER \$100 ASSESSED VALUATION
(TRA 13-000 – 2011-12 Assessed Valuation: \$12,814,675,941)**

	Fiscal Year <u>2007-08</u>	Fiscal Year <u>2008-09</u>	Fiscal Year <u>2009-10</u>	Fiscal Year <u>2010-11</u>	Fiscal Year <u>2011-12</u>
Countywide Rate	1.0000	1.0000	1.0000	1.0000	1.0000
Berkeley Unified School District Bonds	.1405	.1450	.1502	.1463	.1478
Peralta Community College District	.0223	.0362	.0430	.0430	.0436
Bay Area Rapid Transit	.0076	.0090	.0057	.0031	.0041
East Bay Municipal Utility District	.0065	.0064	.0065	.0067	.0071
East Bay Regional Park District	.0080	.0100	.0108	.0084	.0067
City of Berkeley	<u>.0450</u>	<u>.0550</u>	<u>.0506</u>	<u>.0480</u>	<u>.0470</u>
Total	1.2299	1.2616	1.2668	1.2555	1.2563

Source: California Municipal Statistics, Inc.

Alternative Method of Tax Apportionment. The Board of Supervisors of the County has not approved the implementation of the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the “**Teeter Plan**”); therefore, the City’s property tax collections reflect actual delinquencies, plus penalties collected for prior year’s delinquencies.

Principal Taxpayers. The twenty largest taxpayers in the City, as shown on the 2011-12 secured tax roll, and the amounts of their assessed valuation for all taxing jurisdictions within the City, are shown below.

**CITY OF BERKELEY
LARGEST 2011-12 LOCAL SECURED TAXPAYERS**

	<u>Property Owner</u>	<u>Primary Land Use</u>	2011-12 Assessed Valuation	<u>Total (1)</u>
1.	Bayer Healthcare LLC	Industrial	\$268,343,124	2.14%
2.	EQR Acton Berkeley LP	Apartments	111,057,029	0.89
3.	SNK Captec Arpeggio LLC	Commercial	85,126,297	0.68
4.	Granite Library Gardens LP	Apartments	60,308,360	0.48
5.	Essex Berkeley 4th Street LP	Apartments	45,063,723	0.36
6.	SC Hillside Berkeley Inc.	Apartments	44,848,758	0.36
7.	920 Heinz LP	Supermarket	35,824,979	0.29
8.	1950 MLK LLC	Apartments	35,569,099	0.28
9.	Ed Roberts Campus	Office Building	34,515,723	0.28
10.	Hanumandla R. and Hanumandla J. Reddy, Trust	Apartments	34,133,310	0.27
11.	GAIA Building LLC	Apartments	30,261,905	0.24
12.	Seventh Street Properties II III & VIII	Industrial	29,346,785	0.23
13.	BVP Fulton LLC	Apartments	27,863,127	0.22
14.	2600 Tenth Street LLC	Office Building	25,871,661	0.21
15.	John K. Gordon and Janis L. Mitchell, Trust	Office Building	24,991,980	0.20
16.	Prasad R. and Santi Lakireddy	Office Building	24,289,880	0.19
17.	Oxford Street Development LLC	Office Building	23,584,692	0.19
18.	Jay and Anna Lakireddy, Trust	Apartments	22,411,232	0.18
19.	First Shattuck LLC	Office Building	20,810,318	0.17
20.	Numano Sake Company Inc.	Industrial	20,801,847	0.17
			<u>\$1,005,023,829</u>	<u>8.02%</u>

(1) 2011-12 Local Secured Assessed Valuation: \$12,525,929,662.
Source: California Municipal Statistics, Inc.

Redevelopment Agencies Dissolution. As discussed above in “State Budget and Its Impact on the City,” the fiscal year 2011-12 California state budget included a bill to restrict redevelopment agency actions to create new debt, and that later dissolved such agencies (“ABx1 26”). Following an expedited legal challenge, ABx1 26 was upheld as constitutional by the California Supreme Court. Redevelopment agencies faced a deadline of February 1, 2012 to cease operations and dismantle, and to transfer assets and responsibilities to a successor entity. As a consequence of the operation of ABx1 26, the City, as well as counties, school districts and other special districts, may receive higher amounts of ad valorem property tax allocations, due to future receipt of property tax increment amounts that had previously funded redevelopment agencies. However, such tax increment amounts may currently be pledged to secure redevelopment agency bonds or otherwise contractually encumbered, and the City cannot predict when its property tax receipts might increase or by how much.

Other General Fund Revenues

In addition to property taxes, the City has several other major tax and fee revenue sources, as described below. The following table summarizes the City's actual or budgeted general fund revenues from fiscal year 2008-09 through fiscal year 2011-12 (actuals) and fiscal year 2012-13 (budgeted).

**CITY OF BERKELEY
GENERAL FUND REVENUES**

	Actual Revenue FY 2009	Actual Revenue FY 2010	Actual Revenue FY 2011	Actual Revenue FY 2012	Budgeted Revenue FY 2013
Real Property	\$36,635,911	\$37,400,654	\$37,638,086	\$40,671,471	\$42,606,460
Property Transfer Tax	8,043,064	7,987,670	9,126,631	8,519,576	9,000,000
Unsecured Property	2,468,138	2,350,521	2,341,601	2,508,130	2,441,601
Sales Tax	14,237,320	12,693,183	14,218,084	14,844,945	15,485,857
Business License	13,388,579	13,505,958	13,955,148	15,645,924	15,697,399
Hotel Tax	3,711,655	3,647,693	4,164,608	4,595,612	4,931,811
Utility Users Tax	14,658,959	14,412,076	14,396,426	14,091,347	14,716,885
Vehicle In-Lieu	8,396,886	8,545,142	8,819,730	8,553,873	9,158,853
Parking Fines	10,029,602	9,021,035	9,074,481	9,260,453	9,535,000
Moving Violations	491,365	333,629	289,864	229,779	300,000
Interest	4,550,515	5,388,379	5,447,352	1,019,426	4,000,000
Service Fees	6,791,668	6,508,372	7,689,367	7,735,753	7,766,732
SUB-TOTAL	\$123,403,662	\$121,794,312	127,185,328	127,656,290	135,640,598
Other Revenues	18,097,483	17,890,526	17,252,780	15,627,993	13,567,968
TOTAL	<u>\$141,501,145</u>	<u>\$139,684,838</u>	<u>\$144,438,108</u>	<u>\$143,284,283</u>	<u>\$149,208,566</u>

Source: City of Berkeley FY 2012 and FY 2013 Adopted Biennial Budget

Sales and Use Tax. The sales tax is an excise tax imposed on retailers for the privilege of selling or leasing tangible personal property. The use tax is an excise tax imposed for the storage, use, or other consumption of tangible personal property purchased from any retailer. The total sales tax rate within the City is currently 8.75%. The proceeds of sales and uses taxes imposed within the City are distributed by the State to various agencies, with the City receiving 1.0% of the amount collected less 0.25% shifted to the State pursuant to a mechanism commonly known as “Triple Flip.” The 0.25% reduction in local sales tax is used to pay State economic recovery bonds, but cities and counties are then provided with *ad valorem* property tax revenues in lieu of these revenues. See “RISK FACTORS – Impact of State Sales and Use Tax Redirection.”

Collection of the sales and use tax is administered by the California State Board of Equalization. Under its procedures, the State Board of Equalization projects receipts of the sales and use tax on a quarterly basis and remits an advance of the receipts of the sales and use tax to the City on a monthly basis. The amount of each monthly advance is based upon the State Board of Equalization’s quarterly projection. During the last month of each quarter, the State Board of Equalization adjusts the amount remitted to reflect the actual receipts of the sales and use tax for the previous quarter. The Board of Equalization receives an administrative fee based on the cost of services provided by the Board to the City in administering the City’s sales tax, which is deducted from revenue generated by the sales and use tax before it is distributed to the City.

Factors that have historically affected sales tax revenues include the overall economic growth of the Bay Area, competition from neighboring cities, the growth of specific industries within the City, the City’s business attraction and retention efforts, and catalog and Internet sales. In fiscal year 2010-11, revenues from sales and use taxes increased by 12.0% from fiscal year 2009-10.

In 2009, the State Board of Equalization converted the business codes of sales and use tax permit holders to North American Industry Classification System codes. As a result of the coding change, retail stores data for 2009 is not comparable to that of prior years. A summary of

historic taxable sales within the City during the past five calendar years for which such data is available is shown in the following table.

**CITY OF BERKELEY
TAXABLE TRANSACTIONS
(Figures in Thousands)**

	2006	2007	2008	2009 ⁽¹⁾	2010 ⁽¹⁾
Retail and Food Services:					
Apparel Stores	\$55,572	\$57,539	\$56,735	\$54,648	54,930
Gen. Merchandise Stores	58,017	61,427	56,729	9,020	9,119
Food Stores	62,193	63,256	63,315	82,004	89,959
Eating and Drinking Places	216,900	230,566	236,391	226,592	233,765
Home Furnishings and Appliances	71,330	67,632	54,595	61,908	64,135
Bldg. Materials, Farm Implements	91,568	87,127	82,177	80,987	80,430
Auto Dealers, Auto Supplies	130,088	122,122	109,791	105,991	112,777
Gas/Service Stations	75,623	79,962	86,391	69,433	81,167
Other Retail Stores	<u>266,053</u>	<u>272,605</u>	<u>269,252</u>	<u>258,281</u>	<u>243,838</u>
Total Retail and Food Services	1,027,344	1,042,236	1,015,377	948,865	970,121
All Other Outlets	<u>310,374</u>	<u>310,560</u>	<u>324,421</u>	<u>281,337</u>	<u>299,939</u>
TOTAL ALL OUTLETS	<u>\$1,337,718</u>	<u>\$1,352,796</u>	<u>\$1,339,797</u>	<u>\$1,230,203</u>	<u>1,270,060</u>

(1) Retail Stores data not comparable to years prior to 2009.
Source: State Board of Equalization

Utility Users Tax. The City imposes a 7.5% tax on users of gas, electricity, telephone and water, as well as cellular telephone services for billing addresses within the City. The tax is not applicable to State, County, or City agencies, or to insurance companies and banks. Some of the factors affecting this revenue stream include consumer demand for these utilities, legislative and regulatory action, rate changes, and the evolution of technology. Telecommunications and cable generated approximately 42% of this revenue in fiscal year 2010-11, with revenue from gas and electricity usage generating approximately 58%. Electricity and gas rates are expected to be higher, but reductions in usage should partially offset the effect of the rate increases. In fiscal year 2010-11, revenues from utility users taxes decreased by 0.1% from fiscal year 2009-10.

Business License Tax. The City requires all businesses within the City to be licensed and imposes a business license tax on all business locations and a new license registration fee on applicants for a new license. The annual tax is generally determined based on the type of business and the business's gross receipts. The tax rate varies between \$0.60 per \$1,000 gross receipts for grocers, on the low end, and \$10.81 per \$1,000 gross receipts for rental of real property on the high end. Most types of businesses are required to pay a minimum tax of at least \$51 per year. The overall revenue from this tax is dependent on the number of license renewals each year and the growth of businesses and industries within the City and the Bay Area more generally. In fiscal year 2010-11, revenues from the business license tax increased by 3.3% from fiscal year 2009-10.

Property Transfer Tax. The City collects a 1.5% tax on the value of any documented sale or transfer of real property within the City. The tax is due when the transfer is recorded with the County. Title companies collect the tax as part of the sale closing process and remit the funds to the County when sales or transfers are finalized. The County remits the amounts due monthly, and the amounts are credited to the general fund. A buyer of residential housing built before 1989 may voluntarily choose to reserve up to one-third of the transfer tax to perform seismic upgrades. Buyers typically have up to one year to complete the work and file for a rebate. Previously the title companies held the reserved amount in escrow until the work was completed, but since May 2007, the City has held the money in escrow accounts, with the

interest going to the City. In fiscal year 2007-08 and fiscal year 2008-09, the City saw real property transfer tax revenues decline dramatically (down 53.8%) as a result of reduced sales of residential and commercial property. In fiscal year 2009-10, the City saw these declines subside (down 0.7%). This reversal continued in fiscal year 2010-11 with a 14.3% increase in revenues from fiscal year 2009-10.

Parking Fines. The City issues and adjudicates citations and civil penalties for parking violations through its own administrative structure. It has a great degree of control over the administration of parking fines, although issuing agencies within the County try to standardize parking penalties to the extent possible. Revenue from parking fines is affected by the penalties imposed for violations, the number of employees issuing tickets, how many tickets employees are able to issue, and the number of working parking meters, among other factors. Effective January 1, 2009, the City must remit an additional \$3 per citation to the State due to the enactment of SB 1407. In addition, the City Council approved a \$5 per ticket increase effective October 1, 2009. In fiscal year 2010-11, revenues from parking fines increased by 0.6% from fiscal year 2009-10.¹

Vehicle In Lieu Fees. Vehicle license fees (“VLF”) imposed for the operation of vehicles on state highways are collected by the State Department of Motor Vehicles in lieu of personal property taxes on vehicles. In connection with the offset of the VLF, the State Legislature authorized appropriations from the State General Fund to “backfill” the offset so that local governments, which receive all of the vehicle license fee revenues, would not experience any loss of revenues. The legislation that established the VLF offset program also provided that if there were insufficient State General Fund moneys to fully “backfill” the VLF offset, the percentage offset would be reduced proportionately (i.e., the license fee payable by drivers would be increased) to assure that local governments would not be underfunded.

As part of the 2004 Budget Act negotiations, an agreement was made between the State and local government officials under which the VLF rate was permanently reduced from 2% to 0.65%. In order to protect local governments, the reduction in VLF revenue to cities and counties from this rate change was replaced by an increase in the amount of property tax they receive. Commencing in fiscal year 2004-05, local governments began to receive their full share of replacement property taxes, and those replacement property taxes now enjoy constitutional protection against certain transfers by the State because of the approval of Proposition 1A at the November 2004 election.

As a part of its fiscal year 2009-10 budget, California increased the vehicle license fee from 0.65% to 1.15% for registration fees due on or after the May 19, 2009 special election. This provision expired on July 1, 2011. On July 1, 2011, vehicle license fees returned to 0.65%, and the City is unaware of any current State legislative efforts likely to increase these in fees in the future.

In fiscal year 2010-11, the VLF revenues increased by 3.2% from fiscal year 2009-10.

Other Revenues. The City also collects additional general fund revenues from franchise fees, transient occupancy taxes, ambulance fees, and other more minor sources. Under the City’s cable and electric and gas franchise fee arrangements, the local cable provider pays an annual franchise fee of 5% of gross revenues, and the electricity and gas providers pay the greater of 2% of gross receipts attributable to miles of line operated or 0.5% of gross receipts.

¹ Page 81 of the City’s FY 2012 and FY 2013 Adopted Biennial Budget erroneously states that parking fine revenues decreased for fiscal year 2010-11. In addition, parking fine revenues totaled \$9,074,481 (as shown on page 81), rather than \$9,098,431 as shown in the Parking Fine Revenue table on page 82 of the Budget.

The transient occupancy tax, also known as the hotel tax, is a 12% tax on the room charge for rental of transient lodging; it is paid by the hotel guest. The City also has an agreement with the County to be the exclusive provider of all emergency ground ambulance services within the City; the specific ambulance fee depends on the type of service delivered and is billed to clients or their insurance companies. Finally, other more minor revenue sources include payments for moving violations, interest on existing funds, and other service fees.

Retirement Programs

The City contributes to three plans in the Public Employees' Retirement System ("PERS") of the State of California, each a defined benefit plan. The first plan covers all of the City's full-time and part-time benefited sworn uniformed fire employees and all chiefs (the "Safety Fire Plan"). The second covers all of the City's full-time and part-time benefited sworn uniformed police employees and all chiefs (the "Safety Police Plan"). The third plan covers all remaining eligible City employees (the "Miscellaneous Plan", and, together with the Safety Fire Plan and the Safety Police Plan, the "PERS Plans"). All full-time and part-time benefited employees are eligible to participate in PERS. The City's aggregate contribution to PERS for the three plans for the fiscal year ended June 30, 2011, was \$26,106,712. The City's aggregate contribution to PERS for the three plans for the year ending June 30, 2012, is estimated to be \$31,722,082.

The City also maintains the Berkeley Police Retirement Income Benefit Plan ("BPRIBP"), a single-employer defined benefit income plan, for its police retirees and surviving spouses. During fiscal year 2010-11, the City contributed \$1,180,445 to BPRIBP. The City's contribution to BPRIBP for fiscal year ending June 30, 2012, is estimated to be \$1,307,853.

In addition, the City maintains the Safety Member Pension Fund ("SMPF"), a defined benefit plan for fire and police officers who retired prior to March 1973. In March 1973, all active fire and police officers were transferred from SMPF to PERS. The City pays the benefits to SMPF members on a pay-as-you-go basis, primarily through a Funding Agreement, purchased by the Berkeley Civic Improvement Corporation on behalf of the City in 1989. For the fiscal year ended June 30, 2011, the City's annual required contribution was \$1,554,837, of which \$596,000 was paid through the Funding Agreement and \$958,836 was paid from the City's general fund. The City's contribution to SMPF for fiscal year ending June 30, 2012, is estimated to be \$1,285,923.

On March 14, 2012, the PERS Board voted to reduce its discount rate, which rate is attributable to its expected price inflation and investment rate of return (net of administrative expenses), from 7.75% to 7.5%. As a result of such discount rate decrease, among other things, (i) the amounts of PERS member state and schools employer contributions will increase by 1.2 to 1.6% for Miscellaneous plans and 2.2 to 2.4% for Safety plans beginning fiscal year 2012-13 and (ii) the amounts of PERS member public agency contributions will increase by 1 to 2% for Miscellaneous plans and 2 to 3% for Safety plans beginning fiscal year 2013-14. More information about the PERS discount rate adjustment can be accessed through PERS's web site at www.calpers.ca.gov/index.jsp?bc=/about/press/pr-2012/mar/discount-rate.xml. *The reference to this internet website is shown for reference and convenience only, the information contained within the website may not be current and has not been reviewed by the City and is not incorporated herein by reference.*

The PERS Board adjustment has been undertaken in order to address underfunding of the PERS funds, which arose from significant losses incurred as a result of the economic crisis arising in 2008 and persists due to a slower than anticipated, subsequent economic recovery. The City is unable to predict what the amount of PERS liabilities will be in the future, or the amount of the PERS contributions which the City may be required to make.

For a more detailed discussion of the City's retirement plans, see Appendix B, Note IV(D). The City contributes 100% its Annual Pension Costs to the PERS Plans and the SMPF each year, and the Actuarial Asset Values presented in this Note are equal to the market values of such assets as of June 30, 2011. The City does not fully fund its Annual Pension Costs with respect to the BPRIBP annually, and, as of June 30, 2011, an unpaid contribution of \$11,356,811 with respect to this obligation was recorded as a liability.

Post-Employment Health Benefits

The City offers certain post-employment health benefits to retirees. The City has adopted Government Accounting Standards Board Statement 45 which requires governmental agencies to change their accounting for Other Post-Employment Benefits (“OPEB”) from pay-as-you-go to an accrual basis. See Appendix B, Note IV(E) for information about the City's OPEB liabilities.

Defined Contribution Plans

The City offers certain supplemental retirement and income plans to retirees. See Appendix B, Note IV(F) for information about the City's defined contribution plans.

Labor Relations

As of April 1, 2012, the City employed approximately 1,357 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 102 unrepresented Executive Management, Confidential professional or Confidential Office support positions. The City has not experienced any work stoppages or strikes by its employees.

CITY OF BERKELEY Labor Relations

<u>Labor Organization</u>	<u>Employees</u>	<u>Contract Expiration Date</u>
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	119	June 23, 2012
Berkeley Police Association ⁽¹⁾	175	June 25, 2011
I. B. E. W. Local 1245	16	June 23, 2012
Service Employees International Local 1021 Maintenance and Clerical Chapters	477	July 4, 2015
Service Employees International Local 1021 Community Services and Part-Time Recreation Leaders Association Chapters	331	June 23, 2012
Public Employees Local 1	153	June 23, 2012
Unrepresented Employees	102	

(1) The City is currently in bargaining with representatives of the Berkeley Police Association for renegotiation of the labor agreement between the two parties. At this time, the City does not anticipate the results of such renegotiation to cause a material fiscal impact upon the City's General Fund.
Source: City of Berkeley

Risk Management

The City is exposed to various risks of loss related to torts; theft of, damage to, or

restriction of assets; errors or omissions; injuries to employees; or acts of God.

The City is self-insured for liability claims below \$350,000. The City is a member of the Bay Cities Joint Powers Insurance Authority (“**BCJPIA**”). The BCJPIA consists of 20 municipal or public agency members, all located within the metropolitan San Francisco Bay Area. The BCJPIA provides general liability, auto liability, and errors and omissions coverage between \$350,000 and \$1,000,000. The California Affiliated Risk Management Authority (“**CARMA**”) provides additional coverage to the BCJPIA and its member entities for claims in excess of \$1,000,000, up to \$29,000,000.

The City is self-insured for workers’ compensation. Payments are made to the Workers’ Compensation Self-Insurance Internal Service Fund by transfers from the City’s general fund and other funds of the City on a pay-as-you-go basis.

The City paid approximately \$4.7 million, covering all workers’ compensation claims for all years, for the fiscal year ended June 30, 2011.

The City requires pre-employment physical examinations for high risk, high hazard employees as well as annual examination for all uniformed officers. As part of its workers’ compensation program, copies of all injured employee medical reports are monitored by a third party agent to insure that injured employees receive proper care.

City Debt Structure

Short-Term Debt. The City has issued Tax and Revenue Anticipation Notes (“**TRANS**”) in each recent year. The City’s TRANS are a general obligation of the City, payable from the City’s general fund and any other lawfully available moneys. For fiscal year 2012-13, the City issued TRANS in the amount of \$25,000,000. The TRANS mature on July 11, 2013.

Outstanding General Fund Obligations. The City currently has outstanding long-term general fund debt and lease obligations described below. The City has never defaulted on the payment of principal of or interest on any of its indebtedness.

Certificates of Participation. In April 2003, the Authority issued certificates of participation on behalf of the City in the aggregate principal amount of \$27,950,000. The 2003 Certificates will be defeased and prepaid with proceeds of the Bonds.

In June 2010, the Authority issued certificates of participation on behalf of the City in the aggregate principal amount of \$5,750,000. The City’s underlying rental obligation is a general obligation payable from any available funds of the City. The certificates bear interest at rates between 3.00%-5.75% and the final maturity date is August 1, 2040. As of May 31, 2012, the principal balance outstanding was \$5,750,000.

Lease Revenue Bonds. In October 1999, the Authority issued lease revenue bonds on behalf of the City in the aggregate principal amount of \$9,125,000. The 1999 Bonds will be defeased and redeemed with proceeds of the Bonds.

Pension Obligation Bonds. In May 1998, the City issued pension obligation refunding bonds in the aggregate principal amount of \$12,415,000 to refund the City’s certificates of participation issued in February 1989. The certificates were sold to satisfy a portion of the City’s obligations under an ordinance adopted to provide payments to the Safety Members Pension Fund. The bonds bear interest at rates between 3.80%-5.00% and the final maturity date is

June 1, 2018. As of May 31, 2012, the principal balance outstanding was \$2,285,000. The obligation to repay the bonds is a general fund obligation of the City.

Statement of Direct and Overlapping Debt

The ability of land owners within the City to pay property tax installments as they come due could be affected by the existence of other taxes and assessments imposed upon the land.

The statement of direct and overlapping debt (the “**Debt Report**”) set forth below was prepared by California Municipal Statistics, Inc. as of June 30, 2012. The Debt Report includes only such information as has been reported to California Municipal Statistics, Inc. by the issuers of the debt described therein and by others. The Debt Report is included for general information purposes only. The City takes no responsibility for its completeness or accuracy.

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**Direct and Overlapping Bonded Debt
(As of June 30, 2012)**

2011-12 Assessed Valuation: \$13,194,274,337
 Redevelopment Incremental Valuation: 175,166,354
 Adjusted Assessed Valuation: \$13,019,107,983

<u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	Total Debt 6/30/12	% Applicable (1)	City's Share of Debt 6/30/12
Bay Area Rapid Transit District	\$412,540,000	2.985%	\$ 12,314,319
East Bay Municipal Utility District, Special District No. 1	21,650,000	21.610	4,678,565
Peralta Community College District	427,080,000	23.385	99,872,658
Berkeley Unified School District	224,469,222	99.996	224,460,243
City of Berkeley	79,075,000	100.000	79,075,000
City of Berkeley Community Facilities District No. 1	6,050,000	100.000	6,050,000
East Bay Regional Park District	129,525,000	4.638	6,007,370
City of Berkeley Thousand Oaks Heights AFUU Assessment District	1,310,000	100.000	<u>1,310,000</u>
TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT			\$433,768,155

Ratios to 2011-12 Assessed Valuation:

Direct Debt (\$79,075,000)..... **0.60%**
 Total Direct and Overlapping Tax and Assessment Debt..... 3.29%

DIRECT AND OVERLAPPING GENERAL FUND DEBT:

Alameda County and Coliseum Obligations	\$676,803,000	7.710%	\$ 52,181,511
Alameda County Pension Obligations	131,540,555	7.710	10,141,777
Alameda-Contra Costa Transit District Certificates of Participation	34,485,000	9.358	3,227,106
Peralta Community College District Pension Obligations	160,149,090	23.385	37,450,865
City of Berkeley Lease Revenue Bonds & Cert. of Participation	37,425,000	100.000	37,425,000
City of Berkeley Pension Obligations	1,865,000	100.000	<u>1,865,000</u>
TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT			\$142,291,259
TOTAL DIRECT DEBT			\$118,365,000
TOTAL OVERLAPPING DEBT			\$457,694,414
COMBINED TOTAL DIRECT AND OVERLAPPING DEBT			\$576,059,414 (2)

Ratios to 2011-12 Adjusted Assessed Valuation:

Combined Total Direct Debt (\$118,365,000)..... **0.91%**
 Combined Total Debt 4.42%

(1) Percentage of overlapping agency's assessed valuation located within boundaries of the city.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and tax allocation bonds and non-bonded capital lease obligations.

STATE SCHOOL BUILDING AID REPAYABLE AS OF 6/30/11: \$0

Source: California Municipal Statistics, Inc.

Employment

The unemployment rate in the Oakland-Fremont-Hayward MD was 9.8 percent in March 2012, up from a revised 9.6 percent in February 2012, but below the year-ago estimate of 10.7 percent. This compares with an unadjusted unemployment rate of 11.5 percent for California and 8.4 percent for the nation in during the same period. The February 2011 unemployment rate for Alameda County was 9.7 percent and 9.9 percent in Contra Costa County. The table below shows the civilian labor force and industry employment for Alameda County.

ALAMEDA COUNTY Civilian Labor Force, Employment and Unemployment; Employment by Industry (Annual Averages)

	2007	2008	2009	2010	2011
Civilian Labor Force ⁽¹⁾	746,300	757,600	761,000	761,300	760,900
Employment	711,200	710,900	681,200	675,500	682,000
Unemployment	35,100	46,700	79,800	85,700	78,900
Unemployment Rate	4.7%	6.2%	10.5%	11.3%	10.4%
<u>Wage and Salary Employment:</u> ⁽²⁾					
Agriculture	800	700	700	700	N/A
Manufacturing	73,700	72,300	64,100	60,500	N/A
Wholesale Trade	39,600	38,900	35,900	34,500	N/A
Retail Trade	68,900	65,800	60,900	59,800	N/A
Transportation, Warehousing, Utilities	28,500	27,100	24,900	24,000	N/A
Information	16,000	16,100	14,900	14,000	N/A
Finance and Insurance	23,000	20,500	13,100	13,700	N/A
Real Estate and Rental and Leasing	10,200	10,100	9,300	9,100	N/A
Professional and Business Services	108,600	112,900	102,800	104,400	N/A
Educational and Health Services	79,500	83,000	89,500	91,100	N/A
Leisure and Hospitality	54,800	56,300	53,900	54,100	N/A
Other Services	23,700	23,700	22,900	22,900	N/A
Federal Government	10,600	10,400	10,200	10,400	N/A
State Government	43,500	38,000	37,900	36,900	N/A
Local Government	77,600	76,200	73,200	70,900	N/A
Total, All Industries ⁽³⁾	702,900	692,300	647,700	637,500	N/A

(1) Labor force data is by place of residence; includes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(2) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(3) Totals may not add due to rounding.

Source: State of California Employment Development Department.

The following tables show the major employers in the City and the County.

**CITY OF BERKELEY
Major Employers
2011**

<u>Employer</u>	<u>Number of Employees</u>	<u>% of Total Employment</u>
University of California Berkeley	13,778	18.13%
Lawrence Berkeley National Laboratory	4,200	5.53
Alta Bates Medical Center	3,100	4.08
City of Berkeley	1,485	1.95
Bayer Corporation	1,476	1.94
Berkeley Unified School District	1,200	1.58
Kaiser Permanente Medical Group	700	0.92
Pacific Steel Casting Company	350	0.46
Andronico's Market	291	0.38
Berkeley City College	290	0.38

Source: City of Berkeley, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2011.

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COUNTY OF ALAMEDA
Major Employers (Listed alphabetically)
2012

Employer Name	Location	Industry
Alameda County Law Enforcement	Oakland	Sheriff
Alameda County Medical Ctr	Oakland	Hospitals
Alameda County Sheriff Dept	Pleasanton	Sheriff
Alta Bates Summit Medical Ctr	Berkeley	Hospitals
Bayer Corp	Berkeley	Drug Millers (Mfrs)
Berkeley Coin & Stamp	Berkeley	Coin Dealers Supplies & Etc
California State-East Bay	Hayward	Schools-Universities & Colleges Academic
Children's Hospital & Research	Oakland	Hospitals
Clorox Co	Oakland	Specialty Cng Plshng/Sanitation (Mfrs)
Clorox Co	Pleasanton	Specialty Cng Plshng/Sanitation (Mfrs)
Cooper Vision Inc	Pleasanton	Physicians & Surgeons Equip & Supls-Mfrs
East Bay Water	Oakland	Transit Lines
EMC Corp	Pleasanton	Computer Storage Devices (Mfrs)
Kaiser Permanente Hospital	Hayward	Hospitals
Kaiser Permanente Medical Ctr	Oakland	Hospitals
Lawrence Livermore Natl Lab	Livermore	Laboratories-Testing
Oakland Police Chief	Oakland	Police Departments
Oakland Police Patrol Div	Oakland	Police Departments
Residential & Student Svc Prog	Berkeley	Schools-Universities & Colleges Academic
Tesla Motors	Fremont	Automobile Dealers-Used Cars
Transportation Dept-California	Oakland	State Government-Transportation Programs
University of CA-Berkeley	Berkeley	Schools-Universities & Colleges Academic
University-CA Dept Edu Otrch	Oakland	Schools-Universities & Colleges Academic
Valleycare Health System	Livermore	Rehabilitation Services
Waste Management Inc	Oakland	City Government-Environmental Programs

Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2012 1st Edition.

Effective Buying Income

“Effective Buying Income” is defined as personal income less personal tax and nontax payments, a number often referred to as “disposable” or “after-tax” income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor’s income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), nontax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as “disposable personal income.”

The following table summarizes the total effective buying income for the City of Berkeley, the County of Alameda, the State and the United States for the period 2007 through 2011. Data for 2012 is not yet available.

**CITY OF BERKELEY AND COUNTY OF ALAMEDA
Effective Buying Income
As of January 1, 2007 through 2011**

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2007	Berkeley	\$ 2,965,218	\$44,217
	Alameda County	37,572,278	54,688
	California	814,894,438	48,203
	United States	6,300,794,040	41,792
2008	Berkeley	\$ 3,033,685	\$45,264
	Alameda County	38,889,500	55,987
	California	832,531,445	48,952
	United States	6,443,994,426	42,303
2009	Berkeley	\$ 3,058,515	\$46,114
	Alameda County	40,053,865	57,997
	California	844,823,319	49,736
	United States	6,571,536,768	43,252
2010	Berkeley	\$ 2,996,260	\$44,932
	Alameda County	38,097,873	54,732
	California	801,393,028	47,177
	United States	6,365,020,076	41,368
2011	Berkeley	\$ 3,060,805	\$43,939
	Alameda County	39,064,683	54,542
	California	814,578,458	47,062
	United States	6,438,704,664	41,253

Source: The Nielsen Company (US), Inc.

Construction Activity

Provided below are the building permits and valuations for the City of Berkeley for calendar years 2006 through 2010.

CITY OF BERKELEY Total Building Permit Valuations (Valuations in Thousands)

	2006	2007	2008	2009	2010
<u>Permit Valuation</u>					
New Single-family	\$4,682.2	\$4,101.2	\$4,202.6	\$1,267.6	\$1,133.0
New Multi-family	12,625.8	21,849.9	42,613.6	27,787.3	2,337.0
Res. Alterations/Additions	<u>45,700.8</u>	<u>45,385.8</u>	<u>40,840.1</u>	<u>32,856.7</u>	<u>38,019.5</u>
Total Residential	<u>\$63,008.8</u>	<u>\$71,336.9</u>	<u>\$87,656.3</u>	<u>\$61,911.6</u>	<u>41,489.5</u>
New Commercial	2,610.0	11,620.0	22,586.9	2,996.6	0.0
New Industrial	0.0	1,125.0	0.0	1,200.0	0.0
New Other	4,279.9	2,166.4	2,163.1	3,373.0	2,478.4
Com. Alterations/Additions	<u>14,974.2</u>	<u>20,298.1</u>	<u>25,713.4</u>	<u>18,740.3</u>	<u>34,104.3</u>
Total Nonresidential	<u>\$21,864.1</u>	<u>\$35,209.5</u>	<u>\$50,463.4</u>	<u>\$26,310.0</u>	<u>\$36,582.8</u>
<u>New Dwelling Units</u>					
Single Family	13	13	15	4	2
Multiple Family	<u>127</u>	<u>156</u>	<u>394</u>	<u>174</u>	<u>16</u>
TOTAL	<u>140</u>	<u>169</u>	<u>409</u>	<u>178</u>	<u>18</u>

Source: Construction Industry Research Board, Building Permit Summary.

APPENDIX E
FORM OF OPINION OF BOND COUNSEL

APPENDIX F

DTC AND THE BOOK-ENTRY ONLY SYSTEM

The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

Neither the issuer of the Bonds (the “Issuer”) nor the trustee, fiscal agent or paying agent appointed with respect to the Bonds (the “Agent”) take any responsibility for the information contained in this Appendix.

No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income

Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org. *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting

rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

INDENTURE OF TRUST

Dated as of October 1, 2012

between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

and the

BERKELEY JOINT POWERS FINANCING AUTHORITY

Authorizing the Issuance of

\$ _____
Berkeley Joint Powers Financing Authority
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)

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APPENDIX A	DEFINITIONS
APPENDIX B	FORM OF BOND

INDENTURE OF TRUST

This INDENTURE OF TRUST (this “**Indenture**”), dated for convenience as of October 1, 2012, is between the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the “**Authority**”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, with a corporate trust office in Los Angeles, California, being qualified to accept and administer the trusts hereby created (the “**Trustee**”).

BACKGROUND:

1. In 1999, the Authority issued its \$9,125,000 Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 1999 (the “**1999 Bonds**”), pursuant to a Trust Indenture, dated as of October 1, 1999 (the “**1999 Trust Indenture**”), by and among the Authority, the City of Berkeley (the “**City**”) and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**1999 Trustee**”).

2. The Authority issued the 1999 Bonds to provide financing for the acquisition by the Authority of a theater facility pursuant to an Acquisition Agreement, dated as of October 1, 1999, between the Authority and Berkeley Repertory Theatre, a California nonprofit, public benefit corporation (the “**Theatre**”), which the Authority leased to the City pursuant to a Lease Agreement, dated as of October 1, 1999 (the “**1999 Theater Lease**”), and which the City subsequently subleased to Berkeley Repertory Theatre, a California nonprofit, public benefit corporation, pursuant to a Sublease Agreement, dated as of October 1, 1999.

3. The Authority also issued the 1999 Bonds to provide financing for the acquisition by the City of Harrison Park, which the City leased to the Authority pursuant to a Site and Facilities Lease, dated as of August 1, 1999 (the “**1999 Site Lease**”) and which the Authority subleased to the City pursuant to a Lease/Purchase Agreement, dated as of October 1, 1999 (the “**1999 Park Lease**”).

4. In 2003, the City and the Authority entered into (a) a Site Lease, dated as of February 1, 2003 (the “**2003 Site Lease**”), for the purpose of leasing certain real property and an office building located on such real property, commonly referred to as 1947 Center (the “**2003 Leased Property**”) and (ii) a Lease Agreement, dated as of February 1, 2003 (the “**2003 Lease Agreement**”), pursuant to which the Authority leased the 2003 Leased Property back to the City.

5. Also in 2003, the City caused execution and delivery of the \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects) (the “**2003 Certificates**”), pursuant to a Trust Agreement, dated as of February 1, 2003 (the “**2003 Trust Agreement**”), among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**2003 Trustee**”), for the purpose of financing acquisition, construction, equipping and improvement of the 2003 Leased Property and various other public improvements. The 2003 Certificates represent direct, undivided fractional interests in the lease payments made by the City under the 2003 Lease Agreement.

6. In order to achieve debt service savings for the benefit of the residents of the City, the Authority has agreed to issue its Berkeley Joint Powers Financing Authority

2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the “**Bonds**”) for the purpose of refinancing (but not prepaying) the obligations of the City under the 1999 Theater Lease, the 1999 Park Lease and the 2003 Lease Agreement, and causing a refunding of the 1999 Bonds and the 2003 Certificates.

7. The 1999 Bonds are subject to optional redemption on any date at a redemption price equal to the principal amount of the 1999 Bonds to be redeemed, plus accrued interest to the redemption date, without premium.

8. The 2003 Certificates are subject to optional prepayment on any date between February 1, 2012 and January 31, 2013 at a prepayment price equal to the principal component of the Certificates to be prepaid, plus accrued interest to the prepayment date, plus a premium of 1%.

9. In connection with the issuance of the Bonds, and to reflect the issuance of the Bonds and the resulting debt service savings, the City and the Authority will enter into the following: (i) an amendment of the 1999 Site Lease (the “**First Amendment to 1999 Site Lease**”) to reflect the issuance of the Bonds and the substitution of the property to be leased thereunder, (ii) an amendment and restatement of the 1999 Theater Lease (the “**Restated 1999 Theater Lease**”), (iii) an amendment and restatement of the 1999 Park Lease (the “**Senior Center Lease**”), (iv) an amendment of the 2003 Site Lease (the “**First Amendment to 2003 Site Lease**”) and (v) an amendment and restatement of the 2003 Lease Agreement (the “**Restated 2003 Lease Agreement**”).

10. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof, premium (if any) and interest thereon, the Authority has authorized the execution and delivery of this Indenture.

11. The Authority has found and determined, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized.

A G R E E M E N T :

In order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in that Appendix when used in this Indenture.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE BONDS

SECTION 2.01. *Authorization of Bonds.* The Authority has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The Authority hereby authorizes the issuance of Bonds in the aggregate principal amount of \$_____ under the Bond Law for the purposes of providing funds to (i) defease and redeem the 1999 Bonds and (ii) defease and prepay the 2003 Certificates.

The Bonds are authorized and issued under, and are subject to the terms of, this Indenture and the Bond Law. The Bonds are designated the “Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing).”

SECTION 2.02. *Terms of the Bonds.*

(a) Payment Provisions. The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date. The Bonds shall mature on October 1 in each of the years and in the amounts, and bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
--	-----------------------------------	--------------------------------	--	-----------------------------------	--------------------------------

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

SECTION 2.03. *Transfer and Exchange of Bonds.*

(a) Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.03, any Bonds selected by the Trustee for redemption under Article IV, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.04. *Book-Entry System.*

(a) Original Delivery. The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the Authority and the Trustee has no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an

interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the Authority and the Trustee has no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed if the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and the interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, under this Indenture. Upon delivery by the Depository to the Authority of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the Trustee in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the

Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (y) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Registration Books.* The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

SECTION 2.06. *Form and Execution of Bonds.* The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Chairman of the Authority shall execute, and the Secretary of the Authority shall attest each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Bond any such person was not an officer of the Authority.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is

conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.07. *Bonds Mutilated, Lost, Destroyed or Stolen.* If any Bond is mutilated, the Authority, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and deliver such mutilated Bond to, or upon the order of, the Authority. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory and if indemnity satisfactory to the Trustee is given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. *Issuance of the Bonds.* At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver the Bonds to the Original Purchaser.

SECTION 3.02. *Application of Proceeds of Sale of Bonds; Transfer of Prior Funds.* Upon the receipt of payment for the Bonds on the Closing Date, the Trustee shall deposit the proceeds thereof into a temporary account, which shall be disbursed in full on the Closing Date (whereupon said temporary account shall be closed) as follows:

- (a) The Trustee shall deposit the amount of \$_____ into the Costs of Issuance Fund.
- (b) The Trustee shall transfer the amount of \$_____, to the 1999 Trustee for deposit into the 1999 Escrow Fund established pursuant to the Escrow Agreement.

- (c) The Trustee shall transfer the amount of \$_____, to the 2003 Trustee for deposit into the 2003 Escrow Fund pursuant to the Escrow Agreement.

In addition to the foregoing transfers, on the Closing Date:

- (a) The 1999 Trustee will withdraw the amount of \$_____ from the **[specify funds]** established for the 1999 Bonds and deposit such amounts into the 1999 Escrow Fund for application pursuant to the Escrow Agreement.
- (b) The 2003 Trustee will withdraw the amount of \$_____ from the **[specify funds]** established for the 2003 Certificates and deposit such amounts into the 2003 Escrow Fund for application pursuant to the Escrow Agreement.

SECTION 3.03. *Establishment and Application of Costs of Issuance Fund.* The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund" into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02(a). The Trustee shall disburse amounts in the Costs of Issuance Fund from time to time to pay the Costs of Issuance upon submission of a Written Requisition of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Written Requisition of the Authority shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. The Trustee may conclusively rely on such Written Requisitions and shall be fully protected in relying thereon. On January 1, 2013, or upon the earlier Written Request of the Authority, the Trustee shall transfer all amounts remaining in the Costs of Issuance Fund to the Interest Account and shall thereupon close the Costs of Issuance Fund.

SECTION 3.04. *Validity of Bonds.* The recital contained in the Bonds that the same are issued under the Constitution and laws of the State of California shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV

REDEMPTION OF BONDS

SECTION 4.01. *Terms of Redemption.*

(a) Optional Redemption. The Bonds maturing on or before October 1, 2022, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after October 1, 2023, are subject to redemption in whole, or in part at the election of the Authority among maturities on such basis as shall be designated by the Authority and by lot within a maturity, at the option of the Authority, on any date on or after October 1, 2022, from any available source of funds, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

The Authority must give the Trustee written notice of its intention to redeem Bonds under this subsection (a), and the manner of selecting such Bonds for redemption from among the maturities thereof, in sufficient time to enable the Trustee to give notice of such redemption in accordance with Section 4.03.

(b) Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Bonds are subject to redemption as a whole, or in part on a pro rata basis among maturities, on any date, from any Net Proceeds required to be used for such purpose as provided in Section 5.07, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

(c) Mandatory Sinking Fund Redemption. **[to come, if any]**

SECTION 4.02. *Selection of Bonds for Redemption.* Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee shall select the Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

SECTION 4.03. *Notice of Redemption; Rescission.* The Trustee shall mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 30 nor more than 60 days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Municipal Securities Rulemaking Board as provided in the Continuing Disclosure Agreement. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a maturity are called for redemption) Bond numbers of the Bonds to be redeemed and the maturity or maturities of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

The Authority has the right to rescind any notice of the redemption of Bonds under Section 4.01(a) by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

SECTION 4.04. *Partial Redemption of Bonds.* Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

SECTION 4.05. *Effect of Redemption.* Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, including any applicable premium, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed under the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed in accordance with the retention policy of the Trustee then in effect.

ARTICLE V

REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

SECTION 5.01. *Security for the Bonds; Bond Fund.*

(a) Pledge of Revenues and Other Amounts. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under this Indenture are hereby pledged to secure the payment of the principal of and interest and premium (if any) on the Bonds in accordance with their terms and the provisions of this Indenture. Said pledge constitutes a lien on and security interest in the Revenues and such amounts and shall attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

(b) Assignment to Trustee. Under the Assignment Agreement, the Authority has transferred to the Trustee all of the rights of the Authority in the Lease (other than the rights of the Authority under Sections 2.1(e) and 9.4). The Trustee is entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee is also entitled to and shall, subject to the provisions of Article VIII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease.

(c) Deposit of Revenues in Bond Fund. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Bond Fund" which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required hereunder or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund shall be promptly deposited in such funds. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds or provision therefore under Article X, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

SECTION 5.02. *Allocation of Revenues.* On or before each Interest Payment Date, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority:

- (a) Deposit to Interest Account. The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.
- (b) Deposit to Principal Account. The Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date.

SECTION 5.03. *Application of Interest Account.* All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

SECTION 5.04. *Application of Principal Account.* All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates.

SECTION 5.05. *Application of Reserve Account.* The Authority will not create or maintain a debt service reserve account for the Bonds. SECTION 5.06. *Application of Redemption Fund.* The Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit a portion of the Revenues received, in accordance with a Written Request of the Authority, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and premium (if any) of the Bonds to be redeemed under Section 4.01; *provided, however,* that at any time prior to the selection of Bonds for redemption, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed under a Written Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds. The Trustee shall be entitled to conclusively rely on any Written

Request of the Authority received under this Section 5.06, and shall be fully protected in relying thereon.

SECTION 5.07. *Insurance and Condemnation Fund.*

(a) Establishment of Fund. Upon the receipt of proceeds of insurance or eminent domain with respect to the Leased Property, the Trustee shall establish and maintain an Insurance and Condemnation Fund, to be held and applied as hereinafter set forth in this Section 5.07.

(b) Application of Insurance Proceeds. Any Net Proceeds of insurance against accident to or destruction of the Leased Property collected by the City or the Authority in the event of any such accident or destruction shall be paid to the Trustee under Section 6.1 of the Lease and deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund. If the City fails to determine and notify the Trustee in writing of its determination, within 45 days following the date of such deposit, to replace, repair, restore, modify or improve the Leased Property which has been damaged or destroyed, then such Net Proceeds shall be promptly transferred by the Trustee to the Redemption Fund and applied to the redemption of Bonds under Section 4.01(b). Notwithstanding the foregoing sentence, however, if the Leased Property is damaged or destroyed in full, the Net Proceeds of such insurance shall be used by the City to rebuild or replace the Leased Property if such proceeds are not sufficient to redeem Outstanding Bonds equal in aggregate principal amount to the unpaid Lease Payments allocable to the Leased Property. All proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Redemption Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, upon receipt of a Written Request of the City which: (i) states with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund and has not been the basis of any previous withdrawal; and (ii) specifies in reasonable detail the nature of the obligation. Any balance of the proceeds remaining after such work has been completed as certified by the City under a Written Certificate to the Trustee shall be paid to the City. The Trustee shall be entitled to conclusively rely on any Written Request or Written Certificate received under this subsection (b) of this Section 5.07 and in each case, shall be fully protected in relying thereon.

(c) Application of Eminent Domain Proceeds. If all or any part of the Leased Property is taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Authority shall deposit or cause to be deposited with the Trustee the Net Proceeds therefrom, which the Trustee shall deposit in the Insurance and Condemnation Fund under Section 6.1(a) of the Lease and which shall be applied and disbursed by the Trustee as follows:

- (i) If the City has not given written notice to the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for the replacement of the Leased Property or such portion thereof, the Trustee shall transfer such Net Proceeds to the Redemption Fund to be applied towards the redemption of the Bonds under Section 4.01(b).

- (ii) If the City has given written notice to the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for replacement of the Leased Property or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such replacement, upon the filing of Written Requisitions of the City as agent for the Authority.

In each case, the Trustee may conclusively rely upon any notice received under this subsection (c)(ii) of this Section and is protected in relying thereon.

(d) Reliance on Independent Advice. In making any such determination whether to repair, replace or rehabilitate the Leased Property under this Section 5.07, the City may obtain, but is not required to obtain, at its expense, the report of an independent engineer or other independent professional consultant, a copy of which must be filed with the Trustee. The Trustee shall have no duty to review or examine such report. Any such determination by the City is final.

SECTION 5.08. *Investments.* All moneys in any of the funds or accounts established with the Trustee under this Indenture shall be invested by the Trustee solely in Permitted Investments. Such investments shall be directed by the Authority in a Written Request of the Authority filed with the Trustee at least 2 Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments which constitute money market funds; provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a Written Request of the Authority specifying a specific money market fund and, if no such Written Request of the Authority is so received, the Trustee shall hold such moneys uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. To the extent Permitted Investments are registrable, such Permitted Investments must be registered in the name of the Trustee.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the Bond Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section 5.08.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or is dealing as a principal for its own account.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority will not receive such confirmations to the extent permitted by law. The Trustee will furnish the Authority a periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

SECTION 5.09. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued at the Fair Market Value thereof as such term is defined in subsection (d) below. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Written Request of the Authority.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code ; provided that the Authority shall inform the Trustee in writing which funds subject to a yield restriction.

(c) For the purpose of determining the amount in any fund or account established hereunder, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least annually on or before July 15. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it is necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 5.09, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or (iii) the investment is a United States Treasury Security -- State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

(e) To the extent of any valuations made by the Trustee hereunder, the Trustee may utilize and rely upon computerized securities pricing services that may be available to it, including those available through its regular accounting system.

ARTICLE VI

COVENANTS OF THE AUTHORITY

SECTION 6.01. *Punctual Payment.* The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of the Revenues and other amounts pledged for such payment as provided in this Indenture.

SECTION 6.02. *Extension of Payment of Bonds.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in this Section 6.02 limits the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 6.03. *Against Encumbrances.* The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 6.04. *Power to Issue Bonds and Make Pledge and Assignment.* The Authority is duly authorized under law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other amounts purported to be pledged and assigned, respectively, under this Indenture and under the Assignment Agreement in the manner and to the extent provided in this Indenture and the Assignment Agreement. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 6.05. *Accounting Records.* The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established under this Indenture. The Trustee shall make such books of record and account available for inspection by the Authority and the City, during business hours, upon reasonable notice, and under reasonable circumstances.

SECTION 6.06. *Limitation on Additional Obligations.* The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

SECTION 6.07. *Tax Covenants.*

(a) Private Business Use Limitation. The Authority shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The Authority may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The Authority may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The Authority shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The Authority shall pay when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from amounts paid by the City for that purpose under Section 4.11 of the Lease. The Authority shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e).

SECTION 6.08. *Enforcement of Lease.* The Trustee shall promptly collect all amounts (to the extent any such amounts are available for collection) due from the City under the Lease. Subject to the provisions of Article VIII, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Lease.

SECTION 6.09. *Waiver of Laws.* The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage

of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 6.10. *Further Assurances.* The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. *Events of Default.* The following events constitute Events of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the Authority to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the Authority by the Trustee; provided, however, if in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such 30-day period, such failure shall not constitute an Event of Default if the Authority institutes corrective action within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (d) The commencement by the Authority of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.
- (e) The occurrence and continuation of an event of default under and as defined in the Lease.

SECTION 7.02. *Remedies Upon Event of Default.* If any Event of Default occurs, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding shall, in each case, upon receipt of indemnification satisfactory to Trustee against the costs, expenses and liabilities to be incurred in connection with such action, upon notice in writing to the Authority, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding.

Any such declaration is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority deposits with the Trustee a sum sufficient to pay all the principal of and installments of interest on the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Bonds to the extent permitted by law, and the reasonable fees, charges and expenses (including those of its legal counsel, including the allocated costs of internal attorneys) of the Trustee, and any and all other Events of Default known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority, the City and the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences and waive such Event of Default; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.03. *Application of Revenues and Other Funds After Default.* If an Event of Default occurs and is continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee in the following order of priority:

- (a) To the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its legal counsel including outside counsel and the allocated costs of internal attorneys) incurred in and about the performance of its powers and duties under this Indenture;
- (b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of this Indenture, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference;

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on

such date to the persons entitled thereto, without any discrimination or preference; and

SECTION 7.04. *Trustee to Represent Bond Owners.* The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any law. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture.

SECTION 7.05. *Limitation on Bond Owners' Right to Sue.* Notwithstanding any other provision hereof, no Owner of any Bonds has the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Lease or any other applicable law with respect to such Bonds, unless (a) such Owner has given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee; and (e) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture, the Lease or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.06. *Absolute Obligation of Authority.* Nothing herein or in the Bonds contained affects or impairs the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest and premium (if any) on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon acceleration or call for redemption, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.07. *Termination of Proceedings.* In case any proceedings taken by the Trustee or by any one or more Bond Owners on account of any Event of Default have been discontinued or abandoned for any reason or have been determined adversely to the Trustee or the Bond Owners, then in every such case the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

SECTION 7.08. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee, to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. *No Waiver of Default.* No delay or omission of the Trustee or any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Bond Owners.

SECTION 7.10. *Notice to Bond Owners of Default.* Immediately upon becoming aware of the occurrence of an Event of Default, but in no event later than five Business Days following becoming aware of such occurrence, the Trustee shall promptly give written notice thereof by first class mail, postage prepaid, to the Owner of each Outstanding Bond, unless such Event of Default has been cured before the giving of such notice; *provided, however* that except in the case of an Event of Default described in Sections 7.01(a) or 7.01(b), the Trustee may elect not to give such notice to the Bond Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. *Appointment of Trustee.* The Bank of New York Mellon Trust Company, N.A. is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this Article VIII, so long as any Bonds are Outstanding.

SECTION 8.02. *Acceptance of Trusts; Removal and Resignation of Trustee.* The Trustee hereby accepts the express trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee. If an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by hereunder, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.
- (b) The Authority may remove the Trustee at any time, unless an Event of Default has occurred and is then continuing, and shall remove the Trustee (a) if at any time requested to do so by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.02, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.
- (c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books.
- (d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. In the event of the removal or resignation of the Trustee under subsections (b) or (d), respectively, the Authority shall promptly appoint a successor Trustee.

If no successor Trustee has been appointed and accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, must signify its acceptance of such appointment by executing and delivering to the Authority, to its predecessor Trustee a written acceptance thereof, and after payment by the Authority of all unpaid fees and expenses of the predecessor Trustee, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any

and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to the Leased Property held by such predecessor Trustee under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

- (e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, shall be authorized under such laws to exercise corporate trust powers, shall have (or, in the case of a corporation or association that is a member of a bank holding company system, the related bank holding company has) a combined capital and surplus of at least \$50,000,000, and shall be subject to supervision or examination by a federal or state agency, so long as any Bonds are Outstanding. If such corporation or association publishes a report of condition at least annually under law or to the requirements of any supervising or examining agency above referred to, then for the purpose of this subsection (e), the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee at any time ceases to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

SECTION 8.03. *Merger or Consolidation.* Any bank, national banking association, federal savings association, or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank, national banking association, federal savings association, or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank, national banking association, federal savings association, or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank, national banking association, federal savings association, or trust company shall be eligible under subsection (e) of Section 8.02 shall be the successor to such Trustee,

without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.04. *Liability of Trustee.*

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Bonds or the Lease (including any right to receive moneys thereunder or the value of or title to the premises upon which the Leased Property is located), nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations of Trustee herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee is not liable for any error of judgment made by a responsible officer, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts.

(c) The Trustee is not liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or assigned to it under the Assignment Agreement.

(d) The Trustee is not liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof at its Office from the City, the Authority or the Owners of at least 25% in aggregate principal amount of the Outstanding Bonds. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Lease or the Bonds or of any of the documents executed in connection with the Bonds, or as to the existence of a default or an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee is not responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City or the Authority of the terms, conditions, covenants or agreements set forth in the Lease, other than the covenants of

the City to make Lease Payments to the Trustee when due and to file with the Trustee when due, such reports and certifications as the City is required to file with the Trustee thereunder.

(f) No provision of this Indenture requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, receivers or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver or attorney appointed with due care by it hereunder.

(h) The Trustee has no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Bond Owners under this Indenture, unless such Owners have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities (including but not limited to fees and expenses of its attorneys) which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of Section 8.02(a), this Section 8.04 and Section 8.05, and shall be applicable to the assignment of any rights under the Lease to the Trustee under the Assignment Agreement.

(j) The Trustee is not accountable to anyone for the subsequent use or application of any moneys which are released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Leased Property. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease or this Indenture for the existence, furnishing or use of the Leased Property.

(l) The Trustee has no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(m) The Trustee is authorized and directed to execute the Assignment Agreement in its capacity as Trustee hereunder.

(n) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be

added or deleted from the listing. If the Authority or the City elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority and the City agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(o) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include, but not be limited to, acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

SECTION 8.05. *Right to Rely on Documents.* The Trustee shall be protected and shall incur no liability in acting or refraining from acting in reliance upon any notice, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee is under no duty to make any investigation or inquiry as to any statements contained or matter referred to in any paper or document but may accept and conclusively rely upon the same as conclusive evidence of the truth and accuracy of any such statement or matter and shall be fully protected in relying thereon. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, and the Trustee shall be fully protected in relying thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

SECTION 8.06. *Preservation and Inspection of Documents.* All documents received by the Trustee under the provisions of this Indenture shall be retained in its respective possession and in accordance with its retention policy then in effect and shall, upon reasonable notice to Trustee, be subject to the inspection of the Authority, the City

and any Bond Owner, and their agents and representatives duly authorized in writing, during business hours and under reasonable conditions as agreed to by the Trustee.

SECTION 8.07. *Compensation and Indemnification.* The Authority shall pay to the Trustee from time to time, on demand, the compensation for all services rendered under this Indenture and also all reasonable expenses, advances (including any interest on advances), charges, legal (including outside counsel and the allocated costs of internal attorneys) and consulting fees and other disbursements, incurred in and about the performance of its powers and duties under this Indenture.

The Authority shall indemnify the Trustee, its officers, directors, employees and agents against any cost, loss, liability or expense whatsoever (including but not limited to fees and expenses of its attorneys) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and this Indenture, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder or under the Assignment Agreement or the Lease. As security for the performance of the obligations of the Authority under this Section 8.07 and the obligation of the Authority to make Additional Payments to the Trustee, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such. The rights of the Trustee and the obligations of the Authority under this Section 8.07 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture and the Lease.

ARTICLE IX

MODIFICATION OR AMENDMENT OF INDENTURE AND LEASE AGREEMENT

SECTION 9.01. Amendments Permitted.

(a) Amendments With Bond Owner Consent. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by Supplemental Indenture, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding are filed with the Trustee. No such modification or amendment may (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by this Indenture on such Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It is not necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it is sufficient if such consent approves the substance thereof.

(b) Amendments Without Owner Consent. This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;
- (ii) to cure any ambiguity, inconsistency or omission, or to cure or correct any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority deems necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the Trustee;
- (iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;
- (iv) to modify, amend or supplement this Indenture in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code; or
- (v) to facilitate the issuance of additional obligations of the City under the Lease Agreement as provided in Section 7.5(b)(5) thereof.

(c) Limitation. The Trustee is not obligated to enter into any Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) Bond Counsel Opinion Requirement. Prior to the Trustee entering into any Supplemental Indenture hereunder, the Authority shall deliver to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion from gross income for purposes of federal income taxes of interest on the Bonds.

(e) Notice of Amendments. The Authority shall deliver or cause to be delivered a draft of any Supplemental Indenture to each rating agency which then maintains a rating on the Bonds, at least 10 days prior to the effective date of such Supplemental Indenture under this Section 9.01.

SECTION 9.02. *Effect of Supplemental Indenture.* Upon the execution of any Supplemental Indenture under this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. *Endorsement of Bonds; Preparation of New Bonds.* Bonds delivered after the execution of any Supplemental Indenture under this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same maturity.

SECTION 9.04. *Amendment of Particular Bonds.* The provisions of this Article IX do not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by such Owner.

SECTION 9.05. *Amendment of Lease.* The Trustee will only consent to an amendment of the Lease if (a) in the opinion of Bond Counsel, such amendment will not materially adversely affect the interests of the Owners of the Bonds or (b) the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding to such amendment.

ARTICLE X

DEFEASANCE

SECTION 10.01. *Discharge of Indenture.* Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

- (a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

- (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or
- (c) by delivering all of such Bonds to the Trustee for cancellation.

If the Authority also pays or causes to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied, subject to Section 10.02. In such event, upon the Written Request of the Authority, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption. The Trustee is entitled to conclusively rely on any such Written Certificate or Written Request and, in each case, is fully protected in relying thereon.

SECTION 10.02. *Discharge of Liability on Bonds.* Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Authority may at any time surrender to the Trustee, for cancellation by Trustee, any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. *Deposit of Money or Securities with Trustee.* Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established under this Indenture and shall be:

- (a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in Article IV or

provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount of such Bonds, premium, if any, and all unpaid interest thereon to the redemption date; or

- (b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the City, the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium become due, provided that in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee has been made for the giving of such notice;

provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above). The Trustee shall be entitled to conclusively rely on such Written Request or opinion and shall be fully protected, in each case, in relying thereon.

SECTION 10.04. *Unclaimed Funds.* Notwithstanding any provisions of this Indenture, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for 2 years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date, or 2 years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the Authority free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. *Liability of Authority Limited to Revenues.* Notwithstanding anything in this Indenture or in the Bonds contained, the Authority is not required to advance any moneys derived from any source other than the Revenues, the Additional Payments and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the

Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but is not required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

SECTION 11.02. *Limitation of Rights to Parties and Bond Owners.* Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the City and the Owners of the Bonds.

SECTION 11.03. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with corporate industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations under this Indenture.

SECTION 11.04. *Waiver of Notice; Requirement of Mailed Notice.* Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice is required to be given by mail, such requirement may be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

SECTION 11.05. *Destruction of Bonds.* Whenever in this Indenture provision is made for the cancellation by the Trustee, and the delivery to the Authority, of any Bonds, the Trustee may, in lieu of such cancellation and delivery, destroy such Bonds as may be allowed by law, and at the written request of the Authority the Trustee shall deliver a certificate of such destruction to the Authority.

SECTION 11.06. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 11.07. *Notices.* All notices or communications to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by telephone, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the Authority
or the City:* City of Berkeley
2180 Milvia St.
Berkeley, CA 94704
Attention: Finance Director
Fax: 510-981-7370

If to the Trustee: The Bank of New York Mellon Trust Company, N.A.
700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Administration
Fax: (213) 630-6480

SECTION 11.08. *Evidence of Rights of Bond Owners.* Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Section 11.08.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

SECTION 11.09. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are known by the Trustee to be owned or held by or for the account of the Authority or the City, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other

obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds. In case of a dispute as to such right, the Trustee shall be entitled to rely upon the advice of counsel in any decision by Trustee and shall be fully protected in relying thereon.

Upon request, the Authority shall certify to the Trustee those Bonds disqualified under this Section 11.09, and the Trustee may conclusively rely on such certifications.

SECTION 11.10. *Money Held for Particular Bonds.* The money held by the Trustee for the payment of the interest, premium, if any, or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however,* to the provisions of Section 10.04 but without any liability for interest thereon.

SECTION 11.11. *Waiver of Personal Liability.* No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.12. *Successor Is Deemed Included in All References to Predecessor.* Whenever in this Indenture either the Authority, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.13. *Execution in Several Counterparts.* This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 11.14. *Payment on Non-Business Day.* In the event any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and with the same effect as if made on such preceding non-Business Day.

SECTION 11.15. *Governing Law.* This Indenture shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the BERKELEY JOINT POWERS FINANCING AUTHORITY has caused this Indenture to be signed in its name by its Chief Financial Officer and attested to by its Secretary, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

**BERKELEY JOINT POWERS FINANCING
AUTHORITY**

By _____
Chief Administrative Officer

Attest:

Secretary

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,**
as Trustee

By _____
Authorized Officer

APPENDIX A

DEFINITIONS

“Additional Payments” means the amounts of additional rental which are payable by the City under Section 4.11 of the Lease or which are otherwise identified as Additional Payments under the Lease.

“Assignment Agreement” means, collectively, the Assignment Agreements relating to the Leases, dated as of October 1, 2012, between the Authority as assignor and the Trustee as assignee, as originally executed or as thereafter amended.

“Authority” means the Berkeley Joint Powers Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California.

“Authorized Representative” means: (a) with respect to the Authority, its Chief Administrative Officer, Treasurer/Auditor or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chief Administrative Officer and filed with the City and the Trustee; and (b) with respect to the City, its City Manager, Deputy City Manager, Director of Finance or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its City Manager and filed with the Authority and the Trustee.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

“Bond Fund” means the fund by that name established and held by the Trustee under Section 5.01.

“Bond Law” means Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code.

“Bond Year” means each twelve-month period extending from October 2 in one calendar year to October 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year commences on the Closing Date and extends to and including October 1, 2013.

“Bonds” means the Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) authorized by and at any time Outstanding under this Indenture.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the City in which the Office of the Trustee is located.

“City” means the City of Berkeley, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California.

“Closing Date” means the date of delivery of the Bonds to the Original Purchaser.

“Continuing Disclosure Agreement” means the Continuing Disclosure Certificate executed by the City in connection with the issuance of the Bonds, pursuant to Section 7.15 of the Lease.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, issuance, sale and delivery of the Bonds and the refunding of the 1999 Bonds and the 2003 Certificates, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee and their respective counsel, including the Trustee’s first annual administrative fee; fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds and the refunding of the 1998 Bonds and the 2003 Certificates.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.03.

“Depository” means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository under Section 2.04.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Escrow Agreement” means the Escrow Deposit and Trust Agreement dated as of the Closing Date, among the Authority, the City and The Bank of New York Mellon Trust Company, N.A., as escrow agent, 1999 Trustee and 2003 Trustee, relating to the payment and prepayment of the 1999 Bonds and the 2003 Certificates.

“Event of Default” means any of the events specified in Section 7.01.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Bonds at a yield in excess of the yield on the Bonds.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“First Amendment to 1999 Site Lease” means the First Amendment to Site and Facilities Lease, dated as of October 1, 2012, between the Authority and the City.

“First Amendment to 2003 Site Lease” means the First Amendment to Site Lease, dated as of October 1, 2012, between the Authority and the City.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture under the provisions hereof.

“Independent Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the City; (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

“Insurance and Condemnation Fund” means the fund by that name established and held by the Trustee under Section 5.07.

“Interest Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Interest Payment Date” means each April 1 and October 1, commencing April 1, 2013, so long as any Bonds remain unpaid.

“Lease” means, collectively, the Restated 1999 Theater Lease, the Senior Center Lease and the Restated 2003 Lease Agreement, as originally executed and as they may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

“Lease Payment Date” means, with respect to any Interest Payment Date, the 5th Business Day immediately preceding such Interest Payment Date.

“Lease Payments” means the amounts payable by the City under the Restated 1999 Theater Lease, the Senior Center Lease and the Restated 2003 Lease Agreement, including any prepayment thereof and including any amounts payable upon a delinquency in the payment thereof.

“Leased Property” means the real property leased to the City pursuant to the Lease, together with all improvements and facilities at any time situated thereon.

“Net Proceeds” means amounts derived from any policy of casualty insurance or title insurance with respect to the Leased Property, or the proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings (including sale under threat of such proceedings), to the extent remaining after payment therefrom of all expenses incurred in the collection and administration thereof.

“1999 Bonds” means the Authority’s \$9,125,000 initial principal amount Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 1999.

“1999 Trust Indenture” means the Trust Indenture, dated as of October 1, 1999, by and among the Authority, the City and the 1999 Trustee.

“1999 Trustee” means The Bank of New York Mellon Trust Company, N.A., as trustee under the 1999 Trust Indenture.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

“Office” means the corporate trust office of the Trustee in Los Angeles, California, or such other or additional offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of the Indenture; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term means the office or agency of the Trustee at which, at any particular time, its corporate trust agency business is conducted.

“Original Purchaser” means the original purchaser of the Bonds upon their delivery by the Trustee on the Closing Date.

“Outstanding”, when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Bonds (or portions thereof) described in Section 11.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee under this Indenture.

“Owner”, whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

“Permitted Investments” means any of the following:

- (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged.
- (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.
- (c) Any direct or indirect obligations of an agency or department of the United States of America whose obligations represent the full faith and credit of the United States of America, or which are rated A or better by S&P.
- (d) Interest-bearing deposit accounts (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State of California banks (including the Trustee), provided

that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation.

- (e) Commercial paper rated “A-1+” or better by S&P.
- (f) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of “A-1+” or better by S&P.
- (g) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAm-G, AAAm or AAm, which funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services.
- (h) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by S&P, or (b) fully secured as to the payment of principal and interest by Permitted Investments described in clauses (a) or (b).
- (i) Obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by S&P.
- (j) Bonds or notes issued by any state or municipality which are rated A or better by S&P.
- (k) Any investment agreement with, or guaranteed by, a financial institution the long-term unsecured obligations or the claims paying ability of which are rated A or better by S&P at the time of initial investment, by the terms of which all amounts invested thereunder are required to be withdrawn and paid to the Trustee in the event either of such ratings at any time falls below A.
- (l) The Local Agency Investment Fund of the State of California, created pursuant to Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

“Principal Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Record Date” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Fund” means the fund by that name established and held by the Trustee under Section 5.06.

“Registration Books” means the records maintained by the Trustee under Section 2.05 for the registration and transfer of ownership of the Bonds.

“Restated 1999 Theater Lease” means the Amended and Restated Lease Agreement (Theater), dated as of October 1, 2012, between the Authority and the City.

“Restated 2003 Lease Agreement” means the Amended and Restated Lease Agreement (Office Building), dated as of October 1, 2012, between the Authority and the City.

“Revenues” means: (a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding any Additional Payments; and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established under this Indenture.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority designates in written notice filed with the Trustee.

“Senior Center Lease” means the Amended and Restated Lease/Purchase Agreement, dated as of October 1, 2012, between the Authority and the City.

“S&P” means Standard & Poor’s, a division of the McGraw Hill Companies, of New York, New York, its successors and assigns.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

“Term” means, with reference to the Lease, the time during which the Lease is in effect, as provided in Section 4.2 thereof.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of United States of America, or its successor or successors, as Trustee hereunder as provided in Article VIII.

“2003 Certificates” means the \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects).

“2003 Trust Agreement” means the Trust Agreement, dated as of February 1, 2003, among the City, the Authority and the 2003 Trustee.

"2003 Trustee" means The Bank of New York Mellon Trust Company, N.A., as trustee under the 2003 Trust Agreement.

"Written Certificate," "Written Request" and "Written Requisition" of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

APPENDIX B

BOND FORM

NO. R-_____

\$_____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA

BERKELEY JOINT POWERS FINANCING AUTHORITY

**2010 REFUNDING LEASE REVENUE BOND
(1999 AND 2003 REFINANCING)**

INTEREST RATE: _____% MATURITY DATE: October 1, _____ ORIGINAL ISSUE DATE: _____, 2012 CUSIP: _____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ***

The BERKELEY JOINT POWERS FINANCING AUTHORITY, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Authority"), for value received hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the 15th day of the month preceding such interest payment date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before March 15, 2013, in which event it shall bear interest from the Original Issue Date specified above; *provided, however*, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, at the Interest Rate per annum specified above, payable semiannually on April 1 and October 1 in each year, commencing April 1, 2013 (the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months.

Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender hereof at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., in Los Angeles, California (the "Trust Office"), as trustee (the "Trustee"). Interest hereon is payable by check of the Trustee mailed to the Registered Owner hereof at the Registered Owner's address as it appears on the

registration books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the Trustee as of such Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States designated by such registered owner in such written request.

This Bond is not a debt of the City of Berkeley (the "City"), the County of Alameda, the State of California, or any of its political subdivisions, and neither the City, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Revenues.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "Bonds"), in an aggregate principal amount of \$_____, all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code, and under an Indenture of Trust dated as of October 1, 2012, between the Authority and the Trustee (the "Indenture") and a resolution of the Authority adopted on October 2, 2012, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Revenues, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Authority to refinance (i) \$9,125,000 Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 1999 and (ii) \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects). This Bond and the interest and premium, if any, hereon are special obligations of the Authority, payable from the Revenues, and secured by a charge and lien on the Revenues as defined in the Indenture, consisting principally of lease payments made by the City under three lease agreements between the Authority and the City (collectively, the "Lease"). As and to the extent set forth in the Indenture, all of the Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture, to the payment of the principal of and interest and premium (if any) on the Bonds.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

The Bonds maturing on or before October 1, 2022, are not subject to optional redemption prior to their respective stated maturity dates. The Bonds maturing on or

after October 1, 2023, are subject to redemption in whole, or in part at the request of the Authority among maturities on such basis as the Authority may designate and by lot within a maturity, at the option of the Authority, on any date on or after October 1, 2022, from any available source of funds, at a redemption price equal to 1000% of the principal amount to be redeemed plus accrued interest to the date of redemption, without premium.

The Bonds are subject to redemption as a whole, or in part by lot, on any date, to the extent of any net proceeds of hazard or title insurance with respect to the property which has been leased under the Lease (the "Leased Property") or any portion thereof which are not used to repair or replace the Leased Property pursuant to the Lease, or to the extent of any net proceeds arising from the disposition of the Leased Property or any portion thereof in eminent domain proceedings which the City elects to be used for such purpose pursuant to the Lease, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

[insert mandatory sinking fund redemption, if any]

As provided in the Indenture, notice of redemption will be mailed by the Trustee by first class mail not less than 30 nor more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption. Notice of any optional redemption of the Bonds may be rescinded under the circumstances set forth in the Indenture, upon notice to the owners of such Bonds.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Bond may be exchanged at the Trust Office for Bonds of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Authority or the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE

HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

It is hereby certified by the Authority that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Ordinance and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Ordinance or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Berkeley Joint Powers Financing Authority has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chairman and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date specified above.

BERKELEY JOINT POWERS FINANCING AUTHORITY

By _____
Chairman

Attest:

Secretary

SPECTIMEN

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

By _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby _____ irrevocably constitute(s) _____ and _____ appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

ESCROW DEPOSIT AND TRUST AGREEMENT

Relating to

\$9,125,000
Berkeley Joint Powers Financing Authority
Lease Revenue Bonds
Series 1999

\$27,950,000
2003 Certificates of Participation
(Building Acquisition and Improvement
Projects)

This ESCROW DEPOSIT AND TRUST AGREEMENT (this “**Agreement**”), dated as of October 1, 2012, is among the CITY OF BERKELEY, CALIFORNIA, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (the “**District**”), the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, acting as escrow agent (the “**Escrow Agent**”) for the 1999 Bonds (defined below) and the 2003 Certificates (defined below), as trustee for the 1999 Bonds (the “**1999 Trustee**”) and as trustee for the 2003 Certificates (“**2003 Trustee**”), all as described below.

BACKGROUND:

1. In 1999, the Authority issued its \$9,125,000 Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 1999 (the “**1999 Bonds**”), pursuant to a Trust Indenture, dated as of October 1, 1999 (the “**1999 Trust Indenture**”), by and among the Authority, the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**1999 Trustee**”).

2. The Authority issued the 1999 Bonds to provide financing for the acquisition by the Authority of a theater facility, which the Authority leased to the City pursuant to a Lease Agreement, dated as of October 1, 1999 (the “**1999 Theater Lease**”).

3. The Authority also issued the 1999 Bonds to provide financing for the acquisition by the City of Harrison Park, which the City leased to the Authority pursuant to a Site and Facilities Lease, dated as of August 1, 1999, and which the Authority subleased to the City pursuant to a Lease/Purchase Agreement, dated as of October 1, 1999 (the “**1999 Park Lease**”).

4. In 2003, the City and the Authority entered into (a) a Site Lease, dated as of February 1, 2003, for the purpose of leasing certain real property and an office building located on such real property, commonly referred to as 1947 Center and (ii) a Lease Agreement, dated as of February 1, 2003 (the “**2003 Lease Agreement**”), pursuant to which the Authority leased such real property and improvements back to the City.

5. Also in 2003, the City caused execution and delivery of the \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects) (the “**2003 Certificates**”), pursuant to a Trust Agreement, dated as of February 1, 2003 (the “**2003 Trust Agreement**”), among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**2003 Trustee**”), for the purpose of financing various public improvements. The 2003 Certificates represent direct, undivided fractional interests in the lease payments made by the City under the 2003 Lease Agreement.

6. In order to achieve debt service savings for the benefit of the residents of the City, the Authority has agreed to issue its Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the “**Bonds**”) for the purpose of refinancing (but not prepaying) the obligations of the City under the 1999 Theater Lease, the 1999 Park Lease and the 2003 Lease Agreement, and causing a refunding of the 1999 Bonds and the 2003 Certificates.

7. The 1999 Bonds are subject to optional redemption on any date at a redemption price equal to the principal amount of the 1999 Bonds to be redeemed, plus accrued interest to the redemption date, without premium.

8. The 2003 Certificates are subject to optional prepayment on any date between February 1, 2012 and January 31, 2013 at a prepayment price equal to the principal component of the 2003 Certificates to be prepaid, plus accrued interest to the prepayment date, plus a premium of 1%.

9. The City wishes to appoint the Escrow Agent for the purpose of establishing two irrevocable escrow funds to be funded, invested, held and administered for the purpose of providing for the payment in full of the principal and interest and premium (if any) with respect to the outstanding 1999 Bonds and the 2003 Certificates, and to provide certain directions to the 1999 Trustee with respect to the 1999 Bonds and the 2003 Trustee with respect to the 2003 Certificates.

10. As a result of the deposit and investment of funds in accordance with this Agreement, the 1999 Bonds will be discharged and defeased in accordance with the provisions of Section 10.01 of the 1999 Trust Indenture and redeemed in accordance with the provisions of Section 4.01(b) of the 1999 Trust Indenture.

11. As a result of the deposit and investment of funds in accordance with this Agreement, the 2003 Certificates will be discharged and defeased in accordance with the provisions of Section 13.01 of the 2003 Trust Agreement and prepaid in accordance with the provisions of Section 4.01(a) of the 2003 Trust Agreement.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as Escrow Bank, 1999 Trustee and 2003 Trustee, hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent; Establishment of Escrow Funds.*

(a) The City and the Authority hereby appoint the Escrow Agent to act as escrow agent for, and directs the Escrow Agent to establish an irrevocable escrow fund (the “**1999 Bonds Escrow Fund**”) for, the purpose of defeasing and redeeming the 1999 Bonds in accordance with the 1999 Trust Indenture. All cash and securities in the 1999 Bonds Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest and premium (if any) with respect to the 1999 Bonds in accordance with the 1999 Trust Indenture. If at any time the Escrow Agent receives actual knowledge that the cash and securities in the 1999 Bonds Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the 1999 Bonds, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

(b) The City hereby appoints the Escrow Agent to act as escrow agent for, and directs the Escrow Agent to establish an irrevocable escrow fund (the “**2003 Certificates Escrow Fund**”; together with the 1999 Bonds Escrow Fund, the “**Escrow Funds**”) for, the purpose of defeasing and prepaying the 2003 Certificates in accordance with the 2003 Trust Agreement. All cash and securities in the 2003 Certificates Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest and premium (if any) with respect to the 2003 Certificates in accordance with the 2003 Trust Agreement. If at any time the Escrow Agent receives actual knowledge that the cash and securities in the 2003 Certificates Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the 2003 Certificates, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. *Deposit and Investment of Amounts in Escrow Funds.*

(a) Deposit of Refunding Bonds Proceeds. On October 24, 2012 (the “**Closing Date**”), the Authority, pursuant to the Refunding Bonds Indenture, will cause to be transferred to the Escrow Agent for deposit into the Escrow Funds the following proceeds of the Refunding Bonds:

(i) **1999 Bonds Escrow Fund:** the amount of \$_____.

(ii) **2003 Certificates Escrow Fund:** the amount of \$_____.

(b) Deposit of Other Moneys.

(i) **1999 Bonds Escrow Fund:** The City hereby directs the 1999 Trustee to transfer to the Escrow Agent for deposit into the 1999 Bonds Escrow Fund the amount of \$_____, to be derived from moneys related to the 1999 Bonds that are available as a result of the defeasance of the 1999 Bonds: **[to come]**.

(ii) **2003 Certificates Escrow Fund:** The City hereby directs the 2003 Trustee to transfer to the Escrow Agent for deposit into the 2003 Certificates Escrow Fund the amount of \$_____, to be derived from moneys related to the 2003 Certificates that are available as a result of the defeasance of the 2003 Certificates: **[to come]**.

(c) Investment of Moneys in the Escrow Funds.

(i) **1999 Bonds Escrow Fund.** On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the 1999 Bonds Escrow Fund in the federal securities listed on Exhibit A; the federal securities listed on Exhibit A are non-callable direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, as required by Section 10.03 of the 1999 Bonds Trust Indenture. The Escrow Agent shall hold the remaining \$_____ in the 1999 Bonds Escrow Fund in cash, uninvested.

(ii) **2003 Certificates Escrow Fund.** On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the 2003 Certificates Escrow Fund in the federal securities listed on Exhibit A; the federal securities listed on Exhibit A are non-callable "Federal Securities" as defined in the 2003 Certificates Trust Agreement. The Escrow Agent shall hold the remaining \$_____ in the 2003 Certificates Escrow Fund in cash, uninvested.

SECTION 3. *Application of Amounts in Escrow Funds.*

(a) 1999 Bonds Escrow Fund. The Escrow Agent is hereby instructed to withdraw from the 1999 Bonds Escrow Fund and transfer to the 1999 Trustee an amount required to pay the principal of and interest and prepayment premium (if any) on the 1999 Bonds, in accordance with the schedule attached as Exhibit B hereto.

Following the payment and prepayment of the 1999 Bonds in full, the Escrow Bank shall transfer any amounts remaining on deposit in the 1999 Bonds Escrow Fund to The Bank of New York Mellon Trust Company, N.A., as trustee for the Refunding Bonds, for deposit in the Bond Fund established under the Refunding Bonds Indenture, to be applied to pay interest next coming due and payable on the Refunding Bonds.

(b) 2003 Certificates Escrow Fund. The Escrow Agent is hereby instructed to withdraw from the 2003 Certificates Escrow Fund and transfer to the 2003 Trustee an amount required to pay the principal of and interest and prepayment premium (if any) on the 2003 Certificates, in accordance with the schedule attached as Exhibit B hereto.

Following the payment and prepayment of the 2003 Certificates in full, the Escrow Bank shall transfer any amounts remaining on deposit in the 2003 Certificates Escrow Fund to The Bank of New York Mellon Trust Company, N.A., as trustee for the Refunding Bonds, for deposit in the Bond Fund established under the Refunding Bonds Indenture, to be applied to pay interest next coming due and payable on the Refunding Bonds.

SECTION 4. *Irrevocable Election to Prepay 1999 Bonds and 2003 Certificates; Defeasance Notice.* The City has irrevocably elected to pay and prepay all of the outstanding 1999 Bonds and all of the outstanding 2003 Certificates on the date set forth in Exhibit B, in accordance with the provisions of the 1999 Trust Indenture and the 2003 Trust Agreement, respectively. The City previously directed the 1999 Trustee and the 2003 Trustee, respectively, to give notice of the prepayment of the 1999 Bonds and the 2003 Certificates in accordance with the requirements of the 1999 Trust Indenture and the 2003 Trust Agreement, respectively, at the expense of the City, using the form set forth in Exhibit C.

The City further hereby directs the 1999 Trustee and the 2003 Trustee, respectively, to file on the Closing Date the applicable notice attached as Exhibit D on the Municipal Securities Rulemaking Board's EMMA system.

SECTION 5. *Compensation to Escrow Agent.* The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Funds be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Funds.

SECTION 6. *Immunities and Liability of Escrow Bank.* The Escrow Bank undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Bank. The Escrow Bank shall not have any liability hereunder except to the extent of its negligence or willful misconduct. In no event shall the Escrow Bank be liable for any special, indirect or consequential damages. The Escrow Bank shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Bank may consult with legal counsel of its own choice and the Escrow Bank shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Bank shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Funds or the moneys and securities to pay the principal, interest and prepayment premium with respect to the 1999 Bonds and 2003 Certificates.

Whenever in the administration of this Agreement the Escrow Bank deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Bank in good faith reliance thereon.

The Escrow Bank may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Bank in connection with this Agreement and believed by the Escrow Bank to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Bank may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care.

The Escrow Bank may at any time resign by giving 30 days written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Bank from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to the resigning Escrow Bank and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Bank may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Bank may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Bank shall be the successor of the Escrow Bank hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The City shall indemnify, defend and hold harmless the Escrow Bank and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Bank for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Bank directly or indirectly relating to, or arising from, claims against the Escrow Bank by reason of its participation in the transactions contemplated hereby except to the extent caused by the Escrow Bank's negligence or willful misconduct. The provisions of the foregoing sentence shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Bank.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Bank e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Bank in its discretion elects to act upon such instructions, the Escrow Bank's understanding of such instructions shall be deemed controlling. The Escrow Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Bank's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Bank, including without limitation the risk of the Escrow Bank acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 7. *Termination of Agreement.* Upon payment in full of the principal of and interest and prepayment premium on the 1999 Bonds and 2003 Certificates and all fees, expense and charges of the Escrow Bank as described above, this Agreement shall terminate and the Escrow Bank shall be discharged from any further obligation or responsibility hereunder.

SECTION 8. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF BERKELEY

By: _____
City Manager

**BERKELEY JOINT POWERS FINANCING
AUTHORITY**

By: _____
Executive Director

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.**, as Escrow Agent, 1999
Trustee and 2003 Trustee

By _____
Authorized Officer

EXHIBIT A

ESCROW SECURITIES

1999 Bonds Escrow Fund

Type of Security	CUSIP or ID	Purchase Date	Maturity Date	First Int Pmt Date	Par Amount	Rate	Purchase Price	Interest Class

2003 Certificates Escrow Fund

Type of Security	CUSIP or ID	Purchase Date	Maturity Date	First Int Pmt Date	Par Amount	Rate	Purchase Price	Interest Class

EXHIBIT B

ESCROW REQUIREMENTS

1999 Bonds

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Prepaid Principal</u>	<u>Prepayment Premium</u> \$0	<u>Total Payment</u>
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2003 Certificates

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Prepaid Principal</u>	<u>Prepayment Premium</u> \$_____ (1%)	<u>Total Payment</u>
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EXHIBIT C

FORM OF NOTICE OF PREPAYMENT

1999 Bonds

\$9,125,000

**Berkeley Joint Powers Financing Authority
Lease Revenue Bonds
Series 1999**

NOTICE IS HEREBY GIVEN, by the Berkeley Joint Powers Financing Authority (the "Authority") that all of the captioned bonds (the "1999 Bonds") have been called for redemption under and within the meaning of the Trust Indenture, dated as of October 1, 1999, relating to the 1999 Bonds (the "1999 Trust Indenture"), on November 10, 2012, at a redemption price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium. From and after the redemption date, interest thereon shall cease to accrue, and all 1999 Bonds must be surrendered.

The 1999 Bonds consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
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The CUSIP number of the 1999 Bonds has been assigned by an independent service and is included in this notice solely for the convenience of the Owners and neither The Bank of New York Mellon Trust Company, N.A., as trustee for the 1999 Bonds (the "1999 Trustee"), the City of Berkeley nor the Authority shall be liable for any inaccuracies in such numbers.

Redemption of the 1999 Bonds as described in this notice shall be conditioned upon the receipt by the 1999 Trustee from the Authority of the funds necessary for the proposed redemption on or before November 10, 2012.

Additional information regarding the foregoing actions may be obtained from Jacki Nowak, Vice President, The Bank of New York Mellon Trust Company, N.A., at 213-630-6408.

Payment of interest on the 1999 Bonds shall be paid by check or draft mailed by the 1999 Trustee to the Owner at the address of the Owner as it appears on the registration books for the 1999 Bonds, or, at the option of any owner of at least \$1,000,000 aggregate principal amount of 1999 Bonds, by wire transfer. The principal and premium (if any) payable will be payable by check or draft of the 1999 Trustee upon surrender of the 1999 Bonds at the Office of 1999 Trustee at 700 South Flower Street, Suite 500, Los Angeles, California 90017.

To avoid a 28% back-up withholding tax pursuant to Federal Law, owners of the 1999 Bonds must submit their 1999 Bonds along with a completed IRS Form W-9. For your convenience a Form W-9 has been enclosed.

Dated: October 10, 2012

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.**

2003 Certificates

\$27,950,000

**2003 Certificates of Participation
(Building Acquisition and Improvement Projects)**

Date of issue: April 1, 2003

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City") that the captioned certificates of participation (the "2003 Certificates") have been called for prepayment under and within the meaning of the Trust Agreement, dated as of February 1, 2003, relating to the 2003 Certificates (the "2003 Trust Agreement"), on November 10, 2012, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, plus a prepayment premium of 1% of the prepaid principal amount. From and after the prepayment date, interest thereon shall cease to accrue.

The 2003 Certificates consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
----------------------	-------------------------	----------------------	--------------

The CUSIP number of the 2003 Certificates has been assigned by an independent service and is included in this notice solely for the convenience of the Owners and neither The Bank of New York Mellon Trust Company, N.A., as trustee for the 2003 Certificates (the "2003 Trustee"), the City of Berkeley nor the Authority shall be liable for any inaccuracies in such numbers.

Redemption of the 2003 Certificates as described in this notice shall be conditioned upon the receipt by the 2003 Trustee from the City of the funds necessary for the proposed prepayment on or before November 10, 2012.

Additional information regarding the foregoing actions may be obtained from Jacki Nowak, Vice President, The Bank of New York Mellon Trust Company, N.A., at 213-630-6408.

2003 Certificates must be surrendered on the prepayment date at the Principal Office of the 2003 Trustee, for prepayment at the prepayment price. The address of the Principal Office is: 700 South Flower Street, Suite 500, Los Angeles, California 90017.

To avoid a 28% back-up withholding tax pursuant to Federal Law, owners of the 2003 Certificates must submit their 2003 Certificates along with a completed IRS Form W-9. For your convenience a Form W-9 has been enclosed.

Dated: October 10, 2012

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.**

EXHIBIT D

FORM OF NOTICE OF DEFEASANCE

1999 Bonds

\$9,125,000

**Berkeley Joint Powers Financing Authority
Lease Revenue Bonds
Series 1999**

NOTICE IS HEREBY GIVEN, by the Berkeley Joint Powers Financing Authority (the "Authority") that the captioned bonds (the "1999 Bonds") have been defeased and discharged under and within the meaning of the Trust Indenture, dated as of October 1, 1999, relating to the 1999 Bonds (the "1999 Trust Indenture"). Funds for the payment of the 1999 Bonds have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow bank, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 1999 Bonds has been verified by _____, certified public accountants.

As a consequence of the foregoing actions and in accordance with the 1999 Trust Indenture, all obligations of The Bank of New York Mellon Trust Company, N.A., as trustee for the 1999 Bonds, the Authority and the City with respect to the 1999 Bonds has ceased and terminated, except the obligation to use moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The outstanding 1999 Bonds consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
----------------------	-------------------------	----------------------	--------------

The Authority has irrevocably elected to redeem all of the outstanding 1999 Bonds on November 10, 2012, at a redemption price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium.

Additional information regarding the foregoing actions may be obtained from Jacki Nowak, Vice President, The Bank of New York Mellon Trust Company, N.A., at 213-630-6408.

Dated: October 24, 2012

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.**

2003 Certificates

\$27,950,000

**2003 Certificates of Participation
(Building Acquisition and Improvement Projects)**

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City") that the captioned certificates of participation (the "2003 Certificates") have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of February 1, 2003, relating to the 2003 Certificates (the "2003 Trust Agreement"). Funds for the payment of the 2003 Certificates have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow bank, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2003 Certificates has been verified by _____, certified public accountants.

As a consequence of the foregoing actions and in accordance with the 2003 Trust Agreement, all obligations of The Bank of New York Mellon Trust Company, N.A., as trustee for the 2003 Certificates, the Berkeley Joint Powers Financing Authority and the City with respect to the 2003 Certificates has ceased and terminated, except the obligation to use moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The outstanding 2003 Certificates consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
----------------------	-------------------------	----------------------	--------------

The City has irrevocably elected to prepay all of the outstanding 2003 Certificates on November 10, 2012, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, plus a premium equal to 1% of the principal amount of the 2003 Certificates to be prepaid.

Additional information regarding the foregoing actions may be obtained from Jacki Nowak, Vice President, The Bank of New York Mellon Trust Company, N.A., at 213-630-6408.

Dated: October 24, 2012

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.**

WHEN RECORDED, RETURN TO:

Jones Hall,
A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 94108
Attention: Christopher K. Lynch

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this "Assignment Agreement") is made and entered into as of October 1, 2012, by and between the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers agency organized and existing under the laws of the State of California (the "Authority"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as trustee (the "Trustee") under that certain Indenture of Trust, dated as of October 1, 2012 (the "Indenture").

WITNESSETH:

WHEREAS, the Authority and the City of Berkeley (the "City"), entered into an Amended and Restated Lease Agreement (Office Building), dated as of October 1, 2012, a Memorandum of which was recorded in the Alameda Real Property Records on _____, 2012 as Document No. ____ (together with any amendments or supplements thereto, the "Amended and Restated Lease Agreement"), whereby the Authority subleased to the City, and the City subleased from the Authority, the land and facilities, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Leased Premises"), in the manner and on the terms set forth in the Amended and Restated Lease Agreement; and

WHEREAS, the City is obligated to pay certain lease payments to the Authority or its assignee under the Amended and Restated Lease Agreement; and

WHEREAS, the Authority has issued its 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "Bonds") and, under the Indenture, the Authority is required to deposit or cause to be deposited with the Trustee certain moneys to be credited, held and applied in accordance with the Indenture; and

WHEREAS, the Authority is willing to assign and transfer its right, title and interest under the Amended and Restated Lease Agreement to the Trustee for the benefit of the owners of the Bonds; and

WHEREAS, each of the parties hereto has authority to enter into this Assignment Agreement and has taken all actions necessary to authorize its officers to enter into it.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree as follows:

SECTION 1. *Defined Terms.* All terms defined in the Amended and Restated Lease Agreement and not otherwise defined herein shall have the respective meanings given such terms in the Amended and Restated Lease Agreement, including terms defined therein by reference.

SECTION 2. *Assignment.* The Authority hereby transfers, assigns and sets over to the Trustee, for the benefit of the Insurer and of the Owners of the Certificates, all of the Authority's rights under the Amended and Restated Lease Agreement (excepting only the Authority's rights under Sections 2.1(d), 2.1(e) and 9.4 of the Amended and Restated Lease Agreement), including without limitation (a) the right to receive and collect all of the Lease Payments paid by the City under the Amended and Restated Lease Agreement, and (b) the right to exercise such rights and remedies conferred on the Authority pursuant to the Amended and Restated Lease Agreement as may be necessary or convenient (i) to enforce payment of the Lease Payments and any other amounts required to be deposited in any of the funds or accounts established under the Trust Agreement, or (ii) otherwise to protect the respective interests of the Trustee in the event of a default by the City under the Amended and Restated Lease Agreement. All rights assigned by the Authority to the Trustee shall be administered by the Trustee for the equal and proportionate benefit of the owners of the Bonds in accordance with the Indenture. The assignment made under this Section 2 shall be absolute and irrevocable.

SECTION 3. *Acceptance.* The Trustee hereby accepts the assignments made herein for the purpose of securing the Bonds.

SECTION 4. *Conditions.* This Assignment Agreement shall confer no rights or impose no duties upon the Trustee beyond those expressly provided in the Indenture. The Trustee does not warrant the accuracy of the recitals hereto.

SECTION 5. *Execution in Counterparts.* This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same agreement. It is also agreed that separate counterparts of this Assignment Agreement may be separately executed by the Trustee and the Authority, all with the same force and effect as though the same counterpart had been executed by both the Trustee and the Authority.

SECTION 6. *Binding Effect.* This Assignment Agreement shall inure to the benefit of and shall be binding upon the Authority and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 7. *Governing Law.* This Assignment Agreement shall be construed in accordance with and governed by the Constitution and laws of the State.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement by their officers thereunto duly authorized as of the day and year first written above.

BERKELEY JOINT POWERS FINANCING
AUTHORITY

By: _____
Treasurer

Attest:

By: _____
Secretary

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
as Trustee

By: _____
Authorized Officer

STATE OF CALIFORNIA)
) ss
COUNTY OF ALAMEDA)

On _____ before me, _____, Notary Public, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Alameda, and is described as follows:

Recording Requested By And
When Recorded Mail To:

Jones Hall, A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 95108
Attention: Christopher K. Lynch

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX
PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE.
THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383
OF THE CALIFORNIA GOVERNMENT CODE.

**FIRST AMENDMENT TO SITE LEASE
(Office Building)**

By and between the

**CITY OF BERKELEY,
as Lessor**

and the

**BERKELEY JOINT POWERS FINANCING AUTHORITY,
as Lessee**

Dated as of October 1, 2012

FIRST AMENDMENT TO SITE LEASE (OFFICE BUILDING)

This FIRST AMENDMENT TO SITE LEASE (OFFICE BUILDING) (the "First Amendment"), dated as of October 1, 2012, is by and between the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), as lessor, and the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), as lessee;

RECITALS

WHEREAS, the City and the Authority have heretofore entered into a Site Lease dated as of February 1, 2003 and recorded on _____ as Instrument No. _____ in the Office of the Recorder of the County of Alameda (the "Existing Site Lease" and, together with this First Amendment and as it may be further amended, the "Site Lease"), in connection with execution and delivery of \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects) (the "2003 Certificates") pursuant to which the City leased certain real property described in Exhibit A hereto and any facilities located thereon to the Authority (the "Property"); and

WHEREAS, in connection with the issuance of the 2003 Certificates, the City and the Authority also executed a Lease Agreement, dated as of February 1, 2003 (the "Existing Lease"), pursuant to which the Authority leased the Property back to the City; and

WHEREAS, in order to achieve debt service savings for the benefit of the residents of the City, the Authority is issuing its Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "2012 Bonds") for the purpose of refunding the 2003 Certificates; and

WHEREAS, in connection with the 2012 Bonds, the City and the Authority, with the consent of the Trustee, are amending and restating the Existing Lease, and the Existing Site Lease is being amended by this First Amendment to accommodate the amendments to the Existing Lease;

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained and for other valuable consideration, the City and the Authority do hereby agree as follows:

AGREEMENT

Section 1. Definitions.

The term "Lease," when used in the Site Lease, shall mean the Amended and Restated Lease Agreement (Office Building), dated as of October 1, 2012, by and between the City and the Authority, and consented to by the Trustee.

Section 2. Effectiveness. Other than as amended by this First Amendment, the Existing Site Lease shall remain in full force and effect. This First Amendment shall become effective upon (i) the recordation hereof against the Property in the Official Records of the Alameda County Recorder and (ii) the issuance by the Authority of the 2012 Bonds.

IN WITNESS WHEREOF, the City and the Authority have caused this First Amendment to Site Lease to be executed by their respective officers thereunto duly authorized, all as of the date and year first above written.

CITY OF BERKELEY, as lessor

By: _____
City Manager

Attest:

By: _____
City Clerk

BERKELEY JOINT POWERS FINANCING
AUTHORITY, as lessee

By: _____
Executive Director

Attest:

By: _____
Secretary

EXHIBIT A

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Alameda, and is described as follows:

Recording Requested By And
When Recorded Mail To:

Jones Hall, A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 95108
Attention: Christopher K. Lynch

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX
PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE.
THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383
OF THE CALIFORNIA GOVERNMENT CODE.

FIRST AMENDMENT TO SITE AND FACILITIES LEASE

By and between the

**CITY OF BERKELEY,
as Lessor**

and the

**BERKELEY JOINT POWERS FINANCING AUTHORITY,
as Lessee**

Dated as of October 1, 2012

FIRST AMENDMENT TO SITE AND FACILITIES LEASE

This FIRST AMENDMENT TO SITE AND FACILITIES LEASE (the "First Amendment"), dated as of October 1, 2012, is by and between the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), as lessor, and the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), as lessee;

RECITALS

WHEREAS, the City and the Authority have heretofore entered into a Site and Facilities Lease dated as of October 1, 1999 and recorded on _____ as Instrument No. _____ in the Office of the Recorder of the County of Alameda (the "Existing Site Lease" and, together with this First Amendment and as it may be further amended, the "Site Lease"), in connection with the Authority's issuance of its Lease Revenue Bonds, Series 1999 (the "1999 Bonds") pursuant to which the City leased certain real property described in Exhibit A hereto and any facilities located thereon to the Authority, constituting Harrison Park ; and

WHEREAS, the 1999 Bonds were issued pursuant to a Trust Indenture, dated as of October 1, 1999 (the "Existing Trust Agreement"), by and among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, in connection with the issuance of the 1999 Bonds, the City and the Authority also executed a Lease/Purchase Agreement, dated as of October 1, 1999 (collectively, the "Existing Lease"), pursuant to which the Authority leased the Property back to the City; and

WHEREAS, in order to achieve debt service savings for the benefit of the residents of the City, the Authority is issuing its Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "2012 Bonds") for the purpose of refunding the 1999 Bonds; and

WHEREAS, in connection with the 2012 Bonds, and in order to substitute for Harrison Park as the leased property certain real property and improvements constituting the City's Senior Center (the "Property"), the City and the Authority, with the consent of the Trustee, are amending and restating the Existing Lease pursuant to and in accordance with Section 8.3 of the Existing Lease, and the Existing Site Lease is being amended by this First Amendment to accommodate the amendments to the Existing Lease;

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained and for other valuable consideration, the City and the Authority do hereby agree as follows:

AGREEMENT

Section 1. Definitions.

The term "Trust Agreement," when used in the Site Lease, shall mean the Indenture of Trust relating to the 2012 Bonds, dated as of October 1, 2012, by and between the Authority

and The Bank of New York Mellon Trust Company, N.A., and any indenture of trust executed by the Authority in connection with a refunding of the 2012 Bonds.

The term "Lease," when used in the Site Lease, shall mean the Amended and Restated Lease/Purchase Agreement, dated as of October 1, 2012, by and between the City and the Authority, and consented to by the Trustee.

The term "Bonds," when used in the Site Lease, shall mean the 2012 Bonds and any bonds issued to refinance the 2012 Bonds.

Section 2. Substitution of Property. The real property described on Exhibit A attached hereto and any facilities located thereon are hereby substituted as the Property in place of Harrison Park.

Section 3. Effectiveness. Other than as amended by this First Amendment, the Existing Site Lease shall remain in full force and effect. This First Amendment shall become effective upon (i) the recordation hereof against the Property in the Official Records of the Alameda County Recorder and (ii) the issuance by the Authority of the 2012 Bonds.

IN WITNESS WHEREOF, the City and the Authority have caused this First Amendment to Site and Facilities Lease to be executed by their respective officers thereunto duly authorized, all as of the date and year first above written.

CITY OF BERKELEY, as lessor

By: _____
City Manager

Attest:

By: _____
City Clerk

BERKELEY JOINT POWERS FINANCING
AUTHORITY, as lessee

By: _____
Executive Director

Attest:

By: _____
Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Recording Requested By:)
City of Berkeley)
)
When Recorded Mail To:)
Jones Hall, A Professional Law Corporation)
650 California Street, 18th Floor)
San Francisco, California 94108)
Attn: Christopher K. Lynch)

This document is recorded for the benefit of the City of Berkeley and recording is fee exempt under §27383 of the Government Code.

**AMENDED AND RESTATED
LEASE AGREEMENT
(OFFICE BUILDING)**

Dated as of October 1, 2012

by and between the

BERKELEY JOINT POWERS FINANCING AUTHORITY,

as Lessor

and the

CITY OF BERKELEY,

as Lessee

**Relating to \$ _____
Berkeley Joint Powers Financing Authority
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Lease Refinancings)**

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**AMENDED AND RESTATED
LEASE AGREEMENT
(OFFICE BUILDING)**

THIS AMENDED AND RESTATED LEASE AGREEMENT (OFFICE BUILDING), dated as of October 1, 2012 (this "**Lease**"), by and between the BERKELEY JOINT POWERS FINANCING AUTHORITY (the "**Lessor**"), a public entity duly organized and existing under and by virtue of the Constitution and the laws of the State of California (the "**State**"), and the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and the laws of the State of California, as lessee (the "**Lessee**"), amends and restates that certain Lease Agreement, dated as of February 1, 2003, by and between the Lessor and the Lessee (the "**Original Lease**"), a Memorandum of which was recorded on _____, as Instrument No. _____ in the Office of the Recorder of the County of Alameda;

WITNESSETH:

WHEREAS, the Lessee and the Lessor are authorized pursuant to the laws of the State to lease real property which is proper for public purposes; and

WHEREAS, in 2003, the Lessee proposed to undertake the acquisition, construction, equipping and improvement of a new City of Berkeley office building and various other public improvements; and

WHEREAS, upon its acquisition of the new City of Berkeley office building, the Lessee leased the office building **and** the real property (the "**Site**") on which the office building was located (collectively, the "**Leased Property**"); to the Lessor pursuant to a Site Lease, dated as of February 1, 2003 (the "**Original Site Lease**"); and

WHEREAS, Lessor sub-leased the Leased Property back to the Lessor pursuant to the Original Lease; and

WHEREAS, Lessee has further subleased portions of the Leased Property (collectively, the "**Sublease**"); and

WHEREAS, in order to provide funds to finance the acquisition, construction, equipping and improvement of the new office building and the various other public improvements, the Lessee caused execution and delivery of the 2003 Certificates of Participation (Building Acquisition and Improvement Projects) (the "**2003 Certificates**"), pursuant to a Trust Agreement, dated as of February 1, 2003 (the "**2003 Trust Agreement**"), by and among the Lessor, the Lessee and The Bank of New York Mellon Trust Company, N.A., as trustee; and

WHEREAS, in order to achieve debt service savings for the benefit of the residents of the City, the Lessee is issuing its Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "**Bonds**") for the purpose of refinancing the 2003 Certificates; and

WHEREAS, the refinancing of the 2003 Certificates with the Bonds will not result in the prepayment of the Lease Payments under the Original Lease, but will allow for the reduction in the amount of the Lease Payments reflected in the Original Lease; and

WHEREAS, the Lessor and the Lessee wish to amend and restate the Original Lease pursuant to this Lease in order to reflect the refinancing of the 2003 Certificates; and

WHEREAS, the Lessor and the Lessee will concurrently amend the Original Site Lease pursuant to a First Amendment to Site Lease, dated as of October 1, 2012 (the "**First Amendment to Original Site Lease**"; together with the Original Site Lease, the "**Site Lease**"), to reflect the refunding of the 2003 Certificates;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the Indenture of Trust, dated as of October 1, 2012 (the "**Trust Indenture**"), by and between the Lessor and The Bank of New York Mellon Trust Company, N.A. (the "**Trustee**"), together with any amendments thereof or supplements thereto permitted to be made thereunder; and the additional terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Lease, refer to this Lease as a whole.

"Applicable Environmental Law" means and shall include, but shall not be limited to, CERCLA, RCRA, the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq., the Clean Air Act, 42 USC § 7401 et seq., HWCL, HSAA, the Porter-Cologne Act, the Air Resources Act, Cal. Health & Safety Code §§ 3900 et seq., the Safe Drinking Water & Toxic Enforcement Act, Cal. Health & Safety Code §§ 25249.5 et seq., and the regulations thereunder, and any other local, State or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (i) the existence, cleanup or remedy of contamination on property;
- (ii) the protection of the environment from spilled, deposited or otherwise emplaced contamination;
- (iii) the control of hazardous wastes; or
- (iv) the use, generation, transport, treatment, removal or recovery of Hazardous Substances, including building materials.

"First Amendment to Original Site Lease" means the First Amendment to Site Lease, dated as of October 1, 2012, between Lessor and Lessee.

"Hazardous Substance" means any substance which shall, at any time, be listed as "hazardous" or "toxic" or in the regulations implementing the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 USC §§ 9601 et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 USC §§ 6901 et seq., the California Hazardous Waste Control Law ("**HWCL**"), California Health & Safety Code §§ 25100 et sec., Hazardous Substance Account Act ("**HSAA**"), California Health & Safety Code §§ 25300 et seq., or the Porter-Cologne Water Quality Control Act, (the "**Porter-Cologne Act**"), California Water Code §§ 13000 et seq., or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Law. The term "Hazardous Substance" shall also include, without limitation, raw materials, building components, the products of any manufacturing or other activities on the subject property, wastes, petroleum, and source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC §§ 3011 et sec., as amended).

"Leased Property" means the Site and the Project, collectively, as such property may be modified or improved from time to time.

"Lessee Representative" means the City Manager, Deputy City Manager or the Director of Finance of the Lessee, or any other person authorized by the City Manager or the City Council of the Lessee to act as Lessee Representative.

"Lessor Representative" means the Chief Administrative Officer, Treasurer or the Treasurer/Auditor of the Authority or any other person authorized by the Chief Administrative Officer or the Governing Board of the Lessor to act as Lessor Representative.

"Original Site Lease" means the Site Lease, dated as of February 1, 2003, between the Lessor and the Lessee.

"Permitted Encumbrances" means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the Lessee may, pursuant to provisions of Section 7.7 hereof, permit to remain unpaid; (ii) the Site Lease, this Lease and the Sublease; (iii) any contested right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date (or as of the date of execution of an amendment to this Lease, in the event of an amendment of the Project) and which the Lessee certifies in writing will not materially impair the use of the Leased Property by the Lessee; (v) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Guaranty Company; and (vi) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Lease and to which the Lessor and the Lessee consent in writing.

"Project" means the acquisition, construction, equipping and improvement of a new City of Berkeley office building and various other public improvements.

"Site" means the site described in Exhibit C to this Lease, as amended from time to time.

"Site Lease" means the Original Site Lease as amended by the First Amendment to Original Site Lease.

"Sublease" means, collectively, _____, and any other subleases entered into by Lessee in compliance with Section 8.2(b) hereof. **[reflect existing subleases]**

SECTION 1.2. Exhibits. The following Exhibits are attached to, and by reference made a part of, this Lease:

Exhibit A: Schedule of Lease Payments to be paid by the Lessee to the Lessor, showing the Lease Payment Date and amount of each Lease Payment.

Exhibit B: Legal Description of the Site.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants to the Lessor as follows:

(a) Due Organization and Existence. The Lessee is a charter city duly organized and existing under its charter and the Constitution of the State.

(b) Authorization; Enforceability. The Constitution and laws of the State, including the charter of the Lessee, authorize the Lessee to enter into the Original Lease, this Lease and the Site Lease, and to enter into the transactions contemplated by and to carry out its obligations under the aforesaid Agreements; the Lessee has duly authorized and executed the aforesaid Agreements. This Lease and the Site Lease constitute the legal, valid, binding and enforceable obligations of the Lessee in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default; No Liens or Encumbrances. Neither the execution and delivery of this Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Leased Property except for Permitted Encumbrances and the pledges contained in the Trust Indenture.

(d) Execution and Delivery. The Lessee has duly authorized and executed this Lease and the Site Lease in accordance with the Constitution and laws of the State, including the charter of the City.

(e) Indemnification of Lessor. The Lessee covenants to defend, indemnify and hold harmless the Lessor and its directors, officers and employees (collectively, the "**Indemnified Party**") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Lease, and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Lease. In particular, without limitation, the Lessee shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the Lessee, (ii) any breach or default on the part of the Lessee in the performance of any of its obligations under this Lease, (iii) any act or negligence of the Lessee or of any of its agents, contractors, servants, employees or licensees with

respect to the Leased Property, or (iv) any act or negligence of any assignee or sublessee of the Lessee with respect to the Leased Property. No indemnification is made under this Section or elsewhere in this Lease for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct, negligence, or breach of duty under this Lease by the Lessor, its officers, agents, employees, successors or assigns.

(f) General Tax and Arbitrage Covenant. In order to preserve the tax-exempt nature of interest on the Bonds, Lessee covenants as follows:

(i) *Private Business Use Limitation*. Lessee shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(ii) *Federal Guarantee Prohibition*. Lessee may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(iii) *No Arbitrage*. Lessee may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(iv) *Maintenance of Tax Exemption*. Lessee shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

(v) *Rebate of Excess Investment Earnings to United States*. Lessee shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. Lessee shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by Lessee from any source of legally available funds of Lessee, and shall constitute Additional Rental Payments hereunder.

Lessee shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subparagraph (v). In order to provide for the administration of this subparagraph (v), Lessee may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as Lessee may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by Lessee of any of the requirements under this subparagraph (v).

SECTION 2.2. Representations, Covenants and Warranties of the Lessor. The Lessor represents, covenants and warrants to the Lessee as follows:

(a) Due Organization and Existence; Enforceability. The Lessor is a public entity duly organized, existing under and by virtue of the laws of the State, has the power to enter into this Lease, the Site Lease and the Trust Indenture and to issue the Bonds; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid Agreements and the issuance of the Bonds. This Lease, the Site Lease and the Trust Indenture constitute the legal, valid, binding and enforceable obligations of the Lessor in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(b) No Conflicts or Defaults: No Liens or Encumbrances. Neither the execution and delivery of this Lease, the Site Lease or the Trust Indenture, nor the issuance of the Bonds, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the Joint Exercise of Powers Agreement or Bylaws, if any, of the Lessor or any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Leased Property except by Permitted Encumbrances and by the pledge contained in the Trust Indenture.

(c) Execution and Delivery. The Lessor has duly authorized and executed this Lease, the Site Lease and the Trust Indenture in accordance with the Constitution and laws of the State.

(d) Tax Covenants. Lessor will comply with its covenants in Section 6.07 of the Trust Indenture.

ARTICLE III

DEPOSIT OF BOND PROCEEDS; COMPLETION OF THE PROJECT; FURTHER ASSURANCES

SECTION 3.1. Deposit of Bond Proceeds. On the Closing Date the Lessor agrees to pay or cause to be paid to the Trustee moneys to be deposited with the Trustee as provided in Section 3.02 of the Trust Indenture.

SECTION 3.2. Completion. The Leased Property was acquired and the Project was completed. **[discuss status of unspent proceeds]**

SECTION 3.3. Further Assurances and Corrective Instruments. The Lessor and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the

Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

ARTICLE IV

AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS

SECTION 4.1. Lease. The Lessor hereby leases the Leased Property to the Lessee, and the Lessee hereby leases the Leased Property from the Lessor, upon the terms and conditions set forth herein.

SECTION 4.2. Term. The term of this Lease shall commence on the date of recordation of a grant deed evidencing fee title to the Leased Property held in the name of the Lessor and shall end on October 1, 2032, unless extended pursuant to Section 4.3, or unless terminated prior thereto upon the earliest of any of the following events:

(a) Default and Termination. A default by the Lessee and the Lessor's election to terminate this Lease under Section 9.2(b) hereof;

(b) Payment of All Lease Payments. The payment by or on behalf of the Lessee of all lease payments (the "**Lease Payments**") required under Section 4.4 hereof and any additional payments required under Section 4.11 hereof;

(c) Prepayment by Deposit of Security. The deposit of funds or Federal Securities with the Trustee in amounts sufficient to pay all Lease Payments as the same shall become due, as provided by Section 10.1 hereof and as provided by Section 10.01 of the Trust Indenture; or

(d) Prepayment. Upon the exercise by or on behalf of the Lessee of the option to prepay the Lease Payments or any portion thereof as provided in Section 7.3.

SECTION 4.3. Extension of Lease Term. If on October 1, 2032, the Bonds shall not be fully paid, or if the Lease Payments hereunder shall have been abated at any time and for any reason, then the Term shall be extended until all Bonds shall be fully paid, except that the Term shall in no event be extended beyond October 1, 2042.

SECTION 4.4. Lease Payments.

(a) Time and Amount. Subject to the provisions of Section 4.10 (regarding abatement in event of loss of use of any portion of the Leased Property) and Article X (regarding prepayment of Lease Payments), the Lessee agrees to pay to the Lessor, its successors and assigns, as annual rental for the use and possession of the Leased Property, the Lease Payments (denominated into components of principal and interest, the interest components being paid semiannually) in the amounts specified in Exhibit A, to be due and payable in arrears on the third to the last day of the month (or if such day is not a Business Day, the immediately preceding Business Day), if such payment is by check, or the last day of the month (or if such day is not a Business Day, the immediately preceding Business Day), if such payment is by wire transfer, immediately preceding the respective Payment Dates specified in Exhibit A (each a "**Lease Payment Date**").

(b) [Reserved.]

(c) Credits. Any amount held in the Principal Account and Interest Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole pursuant to Section 10.2 hereof and other amounts required for payment of past due principal with respect to any Bonds not presented for payment or interest), in excess of an amount equal to the principal and interest due and payable on the Bonds on the next Interest Payment Date less the Lease Payment then due and payable, shall be credited towards the Lease Payment then due and payable. No Lease Payment need be made on any Lease Payment Date if the amounts then held in the Principal Account and Interest Account are at least equal to the Lease Payment then required to be paid.

(d) Rate on Overdue Payments. In the event the Lessee should fail to make any of the Lease Payments required in this Section, the Lease Payment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent permitted by law, from the date such amount was originally payable at the rate equal to the highest original interest rate payable on the Bonds.

SECTION 4.5. No Withholding. Notwithstanding any dispute between the Lessor and the Lessee, including a dispute as to the failure of any portion of the Leased Property in use by or possession of the Lessee to perform the task for which it is leased, the Lessee shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

SECTION 4.6. Fair Rental Value. The Lease Payments and Additional Payments shall be paid by the Lessee in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Leased Property during each such period for which said rental is to be paid. The parties hereto have agreed and determined that such total rental represents the fair rental value of the Leased Property. In making such determination, consideration has been given to the Project Costs, other obligations of the parties under this Lease (including but not limited to costs of maintenance, taxes and insurance), the value of the Lessor's fee interest in the Site, the uses and purposes which may be served by the Leased Property, and the benefits therefrom which will accrue to the Lessee and the general public. In the event that the Lessee and the Trustee, as assignee of the Lessor, agree subsequent to the date hereof that Lease Payments and Additional Payments hereunder are less than the fair rental value of the Leased Property, the Lessee and the Trustee may mutually agree that the Lessee shall increase the Lease Payments and Additional Payments payable hereunder to reflect such fair rental value; provided, however, that the Trustee may rely upon an independent MAI appraisal or other appraisal performed by an independent third party reasonably acceptable to the Lessee.

SECTION 4.7. Budget and Appropriation. The Lessee covenants to take such action as may be necessary to include all Lease Payments (other than the Lease Payments of advance rental) and Additional Payments (to the extent such Additional Payments is known to the Lessee at the time its annual budget is proposed), due hereunder in its annual budget and to make the necessary annual appropriations therefor. During the Term, the Lessee will furnish annually to the Trustee a certificate of the Lessee Representative stating that all Lease Payments and Additional Payments due hereunder for the applicable Fiscal Year have been included in its annual budget and the amount so included. The covenants on the part of the Lessee herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the ministerial duty of each and every public official of the Lessee to take such action and do

such things as are required by law in the performance of the official duty of such officials to enable the Lessee to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the Lessee.

SECTION 4.8. Assignment of Lease Payments. Certain of the Lessor's rights under this Lease, including the right to receive and enforce payment of the Lease Payments to be made by the Lessee hereunder, have been assigned to the Trustee, subject to certain exceptions, pursuant to the Trust Indenture, to which assignment the Lessee hereby consents. The Lessor hereby directs the Lessee, and the Lessee hereby agrees to pay to the Trustee at the Trustee's Office all Lease Payments or prepayments thereof payable by the Lessee hereunder. The Lessor will not assign or pledge the Lease Payments or other amounts derived from the Leased Property and from its other rights under this Lease except as provided under the terms of this Lease, or its duties and obligations except as provided under the Trust Indenture.

SECTION 4.9. Use and Possession. The total Lease Payments due in any Fiscal Year (other than the Lease Payments of advance. rental) shall be for the use and possession of the Leased Property for such Fiscal Year.

SECTION 4.10. Abatement of Lease Payments in Event of Loss of Use. The obligation of the Lessee to pay Lease Payments shall be abated during any period in which by reason of damage, destruction or taking by eminent domain or condemnation with respect to any portion of the Leased Property there is substantial interference with the use and possession of such portion of the Leased Property by the Lessee. The amount of such abatement shall be established by the Lessee, who shall obtain an independent MAI appraisal, which determination shall be such that the resulting Lease Payments represent fair consideration for the use and possession of the portion of the Leased Property not damaged, destroyed or taken. Such abatement shall continue for the period commencing with such damage, destruction or taking and ending with the substantial completion of the replacement or work or repair. Except as provided herein, in the event of any such damage, destruction or taking, this Lease shall continue in full force and effect and the Lessee waives any right to terminate this Lease by virtue of any such damage, destruction or taking. There shall be no abatement of Lease Payments to the extent that moneys derived from any person as a result of any defect or delay in the construction or equipping, as applicable, of any item or portion of the Leased Property, are available to pay the amount which would otherwise be abated. Notwithstanding the foregoing sentence, however, there shall be no abatement if the Bond Fund is available to pay the amount which would otherwise be abated.

SECTION 4.11. Additional Payments. In addition to the Lease Payments, the Lessee shall also pay such amounts ("**Additional Payments**") as shall be required for the payment of all administrative costs of the Lessor relating to the Leased Property or the Bonds, including without limitation all expenses, compensation and indemnification of the Trustee payable by the Lessor under the Trust Indenture, taxes of any sort whatsoever payable by the Lessor as a result of its ownership of the Leased Property or undertaking of the transactions contemplated herein or in the Trust Indenture, fees of auditors, accountants, attorneys or engineers, and all other necessary administrative costs of the Lessor or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Bonds or of the Trust Indenture (including any rebate payments to the federal government pursuant to Section 6.07 of the Trust Indenture) or to indemnify the Lessor and its officers and governing board members.

SECTION 4.12. Net-Net-Net Lease. This Lease shall be deemed and construed to be a "net-net-net lease" and the Lessee hereby agrees that the Lease Payments shall be an absolute

net return to the Lessor, free and clear of any expenses, charges or set-offs whatsoever, except as expressly provided herein.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability.

(a) Coverage. The Lessee shall maintain or cause to be maintained, throughout the Term hereof, a standard comprehensive general liability insurance policy or policies in protection of the Lessee and its officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily injury, death or property damage occasioned by reason of the use or operation of the Leased Property.

(b) Limits. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for bodily injury or death of each person and \$3,000,000 for bodily injury or deaths of two or more persons in each accident or event (subject to a deductible clause of not to exceed \$250,000), and in a minimum amount of \$150,000 for damage to property resulting from each accident or event. Such public liability and property damage liability insurance may, however, be in the form of a single limit policy in the minimum amount of \$4,000,000 covering all such risks.

(c) Joint or Self-Insurance. Subject to the provisions of Section 5.6(d) below, such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the Lessee, and may be maintained in the form of self-insurance by the Lessee.

(d) Payment of Net Proceeds. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.2. Worker's Compensation. The Lessee shall also maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Subject to the provisions of Section 5.6(d) below, such worker's compensation insurance may be maintained in the form of self-insurance by the Lessee.

SECTION 5.3. Casualty and Theft Insurance.

(a) Casualty and Theft Insurance: Coverage. The Lessee shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, insurance against loss or damage to any portion of the Leased Property by fire and lightning, with extended coverage, and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Said insurance shall also cover loss or damage to any portion of the Leased Property

from earthquake; provided that the Lessee shall have no obligation to obtain earthquake insurance if the Lessee certifies to the Trustee annually on or before each October 1 that such insurance is not commercially available at reasonable cost.

(b) Amount. Such insurance shall be in an amount at least equal to the greater of (i) 100% of the replacement cost (without deducting for depreciation) of all structures constituting part of the Leased Property (excluding the cost of excavation, of grading and filling, and of the land) and (ii) the aggregate principal amount of Bonds at the time Outstanding. Other than earthquake insurance, such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Earthquake insurance, if any, may be subject to deductible clauses of not to exceed 10% of such replacement cost for any one loss.

(c) Joint Insurance. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the Lessee.

(d) Payment of Net Proceeds. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Insurance and Condemnation Fund and applied as provided in Section 6.1.

SECTION 5.4. Rental Interruption Insurance.

(a) Coverage and Amount. The Lessee shall maintain or cause to be maintained rental income or use and occupancy insurance in an amount not less than the maximum remaining scheduled Lease Payments in any future 24-month period, to insure against loss of rental income from the Leased Property caused by perils covered by the insurance required to be maintained as provided in Section 5.3 hereof. Such insurance shall be obtained as each portion of such Leased Property becomes subject to this Lease.

(b) Joint Insurance; No Self Insurance. Such insurance may be maintained as part of or in conjunction with any other rental income insurance carried by the Lessee. Rental interruption insurance may not be maintained in the form of self-insurance by the Lessee.

(c) Payment of Net Proceeds. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Bond Fund, to be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

SECTION 5.5. Title Insurance. The Lessee shall maintain or cause to be maintained, throughout the Term of this Lease, title insurance on the Site insuring the Lessee's leasehold estate in the Site, subject only to Permitted Encumbrances, in the form of a CLTA leasehold title policy in an amount equal to the principal amount of the Bonds Outstanding, issued by a company of recognized standing, duly authorized to issue the same, payable to the Trustee for the benefit of the Owners of the Bonds. The Net Proceeds of such insurance shall be applied as provided in Section 6.1(a).

SECTION 5.6. General Insurance Provisions.

(a) Form of Policies. All policies of insurance required to be procured and maintained pursuant to this Lease and any statements of self-insurance shall be in form certified by an insurance agent, broker or consultant to the Lessee to comply with the provisions hereof. A copy of such certification shall be sent to the Trustee. All such policies shall provide that the

Lessee shall give the Trustee 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. Each policy of insurance required to be procured and maintained pursuant to Section 5.3 (regarding casualty and theft insurance), Section 5.4 (regarding rental interruption insurance) and Section 5.5 (regarding title insurance) shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Owners.

(b) Payment of Premiums. The Lessee shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease.

(c) Protection of the Trustee. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

(d) Self-Insurance. The Lessee may elect to self-insure as permitted herein. It may only make such election if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Lessor, the Lessee and the Trustee, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by counties in the State other than the Lessee. If the Lessee elects to provide self-insurance pursuant to this Section, the Lessee shall on the date on which the Lessee elects to self-insure, and annually thereafter, cause to be delivered to the Trustee a certificate of the Risk Manager of the Lessee or an independent actuary or insurance consultant certifying to the adequacy of the Lessee's reserves for such self-insurance.

(e) Evidence of Insurance. The Lessee shall cause to be delivered to the Trustee annually a certificate of the Lessee Representative stating that all the insurance policies required by this Lease are in full force and effect. Insurance

SECTION 5.7. Cooperation. The Lessor shall cooperate fully with the Lessee at the expense of the Lessee in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any portion thereof.

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. Application of Net Proceeds.

(a) Deposit in Insurance and Condemnation Fund. Pursuant to Section 5.07 of the Trust Indenture, the Trustee shall deposit Net Proceeds of insurance which it receives in the Insurance and Condemnation Fund as provided in Section 5.3 (regarding casualty and theft insurance) and Section 5.5 (regarding title insurance) promptly upon receipt thereof. The Lessee and/or the Lessor shall transfer to the Trustee any other Net Proceeds received by the Lessee and/or Lessor in the event of any accident, destruction, theft or taking by eminent domain or condemnation with respect to the Leased Property, for deposit in the Insurance and Condemnation Fund.

(b) Disbursement for Replacement or Repair of the Leased Property. Upon receipt of the certification described in paragraph (1) below and the requisition described in paragraph (2) below, the Trustee shall disburse moneys in the Insurance and Condemnation Fund to the person, firm or corporation named in the requisition as provided in Section 5.07 of the Trust Indenture.

(1) Certification. The Lessee Representative must certify to the Lessor and the Trustee that:

(i) Sufficiency of Net Proceeds. The Net Proceeds available for such purpose, together with any other funds supplied by the Lessee for such purpose, are sufficient therefor, and

(ii) Timely Completion. In the event that damage or destruction results in an abatement of Lease Payments, such replacement or repair can be fully completed within a period not in excess of the period in which rental interruption insurance proceeds will be available to pay in full all Lease Payments coming due during such period as described in Section 5.4.

(2) Requisition. The Lessee Representative must state with respect to each payment to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due, (iii) the amount to be paid and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

Any balance of the Net Proceeds remaining after such replacement or repair has been completed and after payment or provision for redemption of all Bonds as provided in Section 5.07 of the Trust Indenture shall be paid to the Lessee.

(c) Disbursement for Prepayment. If the Lessee Representative notifies the Trustee in writing of the Lessee's determination that the certification provided in Section 6.1(b)(1) cannot be made and replacement or repair of any portion of the Leased Property is not economically feasible or in the best interest of the Lessee, then the Trustee shall promptly transfer the Net Proceeds to the Redemption Fund as provided in Section 5.07(b) of the Trust Indenture and apply them to redemption of the Bonds as provided in Section 4.01 of the Trust Indenture and prepayment of Lease Payments as provided in Section 10.2 hereof; provided that in the event of damage or destruction in whole of the Leased Property and in the event such Net Proceeds, together with funds then on hand and available for such purpose in the Bond Fund are not sufficient to redeem all the Bonds then Outstanding, then the Lessee shall not be permitted to certify that repair, replacement or improvement of all of the Leased Property is not economically feasible or in the best interest of the Lessee. In such event, the Lessee shall proceed to repair, replace or improve the Leased Property as described herein from legally available funds in the then current fiscal year and shall make the required notification to the Trustee pursuant to Section 5.07(b) of the Trust Indenture and the Trustee shall disburse moneys in the Insurance and Condemnation Fund to the person, firm, or corporation named in the Requisition as provided therein.

ARTICLE VII

COVENANTS WITH RESPECT TO THE LEASED PROPERTY

SECTION 7.1. Use of the Leased Property. The Lessee represents and warrants that it has an immediate need for, and expects to make immediate use of, all of the Leased Property, which need is not temporary or expected to diminish in the foreseeable future. The Lessee agrees not to give priority in the appropriation of funds for the acquisition or use of any additional equipment or facilities, as the case may be, performing functions similar to that performed by the Leased Property if such priority would adversely affect the interests of the Owners of the Bonds.

SECTION 7.2. Title to the Leased Property.

(a) Lessor Holds Title During Term. During the Term of this Lease, the Lessor does and shall hold title to the Leased Property and any and all additions which comprise remodeling, replacements or modifications. The Lessee shall take any and all actions reasonably required, including but not limited to executing and filing any and all documents reasonably required, to maintain and evidence the Lessor's title to and interest in the Leased Property at all times during the Term of this Lease.

(b) Title Transferred to Lessee at End of Term. Upon expiration of the Term as provided in Section 4.2 hereof (except if such expiration is caused by a default of the Lessee as described in Section 4.2(a)), all right, title and interest of the Lessor in and to all of the Leased Property shall be transferred to and vest in the Lessee without the necessity of any additional document of transfer.

SECTION 7.3. Option to Prepay. The Lessee may exercise an option to prepay the Lease Payments and to purchase the Leased Property or any portion thereof by paying a prepayment price therefor equal to the amounts necessary to cause the termination of the Term for the Leased Property or portion thereof as provided in Section 4.2 hereof.

SECTION 7.4. Quiet Enjoyment. During the Term, the Lessor shall provide the Lessee with quiet use and enjoyment of the Leased Property, and the Lessee shall during such Term peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Lessor, or any person or entity claiming under or through the Lessor except as expressly set forth in this Lease. The Lessor will, at the request of the Lessee, join in any legal action in which the Lessee asserts its right to such possession and enjoyment to the extent the Lessor may lawfully do so. Notwithstanding the foregoing, the Lessor shall have the right to inspect the Leased Property as provided in Section 7.6 hereof.

SECTION 7.5. Installation of Lessee's Personal Property. The Lessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon any portion of the Leased Property. All such items shall remain the sole personal property of the Lessee, regardless of the manner in which the same may be affixed to such portion of the Leased Property, in which neither the Lessor nor the Trustee shall have any interest, and may be modified or removed by the Lessee at any time; provided that the Lessee shall repair and restore any and all damage to such portion of the Leased Property resulting from the installation, modification or removal of any such items of equipment. Nothing in this Lease shall

prevent the Lessee from purchasing items to be installed pursuant to this Section, provided that no lien or security interest shall attach to any part of the Leased Property.

SECTION 7.6. Access to the Leased Property. The Lessee agrees that the Lessor, any Lessor Representative and the Lessor's successors, assigns or designees shall have the right at all reasonable times to enter upon the Leased Property or any portion thereof to examine and inspect the Leased Property. The Lessee further agrees that the Lessor, any such Representative, and the Lessor's successors, assigns or designees shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the Lessee to perform its obligations hereunder.

SECTION 7.7. Maintenance, Utilities, Taxes and Assessments.

(a) Maintenance: Repair and Replacement. Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all repair and maintenance of the Leased Property shall be the responsibility of the Lessee, and the Lessee shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the Lessee or any sublessee thereof. In exchange for the Lease Payments herein provided, the Lessor agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The Lessee waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the Lessee under the terms of this Lease.

(b) Tax and Assessments; Utility Charges. The Lessee shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges of any type or nature charged to the Lessor or the Lessee or levied, assessed or charged against any portion of the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

(c) Contests. The Lessee may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided that prior to such nonpayment it shall furnish the Lessor and the Trustee with the Opinion of Counsel, to the effect that, by nonpayment of any such items, the interest of the Lessor in such portion of the Leased Property will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. Otherwise, the Lessee shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Lessor. The Lessor will cooperate fully in such contest, upon the request and at the expense of the Lessee.

SECTION 7.8. Modification of the Leased Property.

(a) Additions, Modifications and Improvements. The Lessee shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Leased Property if such improvements are necessary or beneficial for the use of such portion of the Leased Property. All such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the

Leased Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would impair the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and the Leased Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Leased Property immediately prior to the making of such additions, modifications and improvements.

(b) No Liens. Except for Permitted Encumbrances, the Lessee will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Lessee pursuant to this Section; provided that if any such lien is established and the Lessee shall first notify or cause to be notified the Lessor of the Lessee's intention to do so, the Lessee may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Lessor with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Trustee as assignee of the Lessor. The Lessor will cooperate fully in any such contest, upon the request and at the expense of the Lessee.

SECTION 7.9. Encumbrances; Alternative Financing Methods.

(a) Encumbrances. Except as provided in this Article VII (including without limitation Section 7.8 hereof and this Section 7.9), the Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, liens, charges, encumbrances or claims, as applicable, on or with respect to the Leased Property, other than Permitted Encumbrances and other than the respective rights of the Lessor and the Lessee as herein provided. Except as expressly provided in this Article VII, the Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time; provided that the Lessee may contest such liens if it desires to do so. The Lessee shall reimburse the Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, change, encumbrance or claim.

(b) Alternative Financing Methods: Notwithstanding the foregoing, the Lessee may create or suffer to create any mortgage, pledge, liens, charges, encumbrances or claims upon the Leased Property or any improvements thereto, provided that (1) any such mortgage, pledge, liens, charges, encumbrances or claims shall at any time while any of the Bonds remain Outstanding be and remain subordinate in all respects to the Lease and any security interest given to the Trustee for the benefit of the Owners and (2) the Lessee shall have first delivered to the Trustee an opinion of Bond Counsel substantially to the effect that such mortgage, pledge, liens, charges, encumbrances or claims would not result in the inclusion of the interest on the Bonds in the gross income of the owners of the Bonds for purposes of federal income taxation or impair the State tax-exempt status of such payments.

SECTION 7.10. Lessor's Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE LESSEE OF THE LEASED PROPERTY OR ANY PORTION THEREOF. THE LESSEE ACKNOWLEDGES THAT THE LESSOR IS NOT A MANUFACTURER OF PORTIONS OF THE LEASED PROPERTY,

AND THAT THE LESSEE IS LEASING THE LEASED PROPERTY AS IS. In no event shall the Lessor or its assigns be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease, the Acquisition Agreement or the Trust Indenture for the existence, furnishing, functioning or Lessee's use and possession of the Leased Property.

SECTION 7.11. [Reserved.]

SECTION 7.12. Environmental Matters.

(a) The Lessee will comply with Applicable Environmental Law and shall not use, store, generate, treat, transport or dispose of any Hazardous Substance on, or in a manner that would cause it to later flow, migrate, leak, leach or otherwise come to rest on or in the Project or the Site.

(b) The Lessee will transmit copies of all records concerning the contact with any local, State or federal agency concerning any violation of any Applicable Environmental Law involving the Project or the Site, and all notices, orders or statements received from any governmental entity concerning violations of Applicable Environmental Law with respect to the Project or the Site and any operations conducted thereon or any conditions existing thereon to the Trustee. The Lessee shall notify the Trustee in writing immediately of any release, discharge, spill or deposit of any Hazardous Substance that has occurred or is occurring which in any way affects or threatens to affect the Project or the Site, or the people, structures, equipment or other property thereon.

(c) The Lessee shall permit the Lessor, its agents or any experts designated by the Lessor to have full access to the Project and the Site during reasonable business hours for purposes of such independent investigation of compliance with Applicable Environmental Law.

SECTION 7.13. [Reserved.]

SECTION 7.14. [Reserved.]

SECTION 7.15. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Lease and the Indenture, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee may (and, at the request of the Original Purchaser or the Owner of at least 25% aggregate principal amount of Outstanding Bonds, shall) or any Owner of Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this paragraph. For purposes of this paragraph, "Beneficial Owner" means any person which (a) has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

ARTICLE VIII

ASSIGNMENT, SUBLEASING, SUBSTITUTION, RELEASE AND AMENDMENT

SECTION 8.1. Assignment by the Lessor. Except as provided herein and in the Trust Indenture, the Lessor will not assign this Lease to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in Section 2.2 hereof.

SECTION 8.2. Assignment and Subleasing by the Lessee.

(a) Assignment. This Lease may be assigned by the Lessee so long as such assignment does not, in the opinion of Bond Counsel, adversely affect the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest on the Bonds. In the event that this Lease is assigned by the Lessee, the obligation to make Lease Payments hereunder shall remain the obligation of the Lessee.

(b) Sublease. The Lessee may sublease all or any portion of the Leased Property, with the consent of the Trustee as assignee of the Lessor, subject to all of the following conditions:

(i) This Lease and the obligation of the Lessee to make Lease Payments hereunder shall remain obligations of the Lessee;

(ii) The Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Lessor and the Trustee a true and complete copy of such sublease;

(iii) No sublease by the Lessee shall cause the Leased Property to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the laws of the State; and

(iv) No sublease shall affect the validity of this Lease or, in the opinion of Bond Counsel addressed to the Lessee, the Lessor and the Trustee, shall cause the interest on the Bonds to become subject to federal income taxes or State personal income taxes.

SECTION 8.3. Amendments and Modifications. Subject to the conditions set forth in this Section 8.3, this Lease may be amended or any of its terms modified with the written consent of the Lessee and the Trustee as assignee of the Lessor. Without the written consent of the Trustee, the Lessee will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Lease, excepting only as such alteration or modification may be permitted by Section 9.05 of the Trust Indenture.

SECTION 8.4. Substitution of Property. The City has the option at any time and from time to time, to substitute other real property (the "**Substitute Property**") for the Leased Property or any portion thereof (the "**Former Property**"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(a) No Event of Default has occurred and is continuing.

- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment hereof which adds the legal description of the Substitute Property to Exhibit C and deletes therefrom the legal description of the Former Property.
- (c) The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- (g) The City has filed with the Authority and the Trustee a written certificate of the City or other written stating that the useful life of the Substitute Property at least extends to October 1, 2032, and the fair rental value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (h) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease and the Assignment Agreement.

SECTION 8.5. Release of Property. The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease (the "**Released Property**") provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient

memorialization of, an amendment hereof which removes the Released Property from the Site Lease and this Lease.

- (c) The City has certified in writing to the Authority and the Trustee that the fair rental value of the property which remains subject to this Lease following such release is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (d) The City has mailed written notice of such release to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Released Property.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be "**events of default**" under this Lease and the terms "**events of default**" and "**default**" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the Lessee to pay any Lease Payment required to be paid hereunder by the next succeeding Payment Date following each corresponding Lease Payment Date; provided, however, that such failure shall not constitute an event of default if the amounts so unpaid have been transferred from a special fund source to the Principal Account and Interest Account to make such Lease Payments pursuant to the terms of the Trust Indenture

(b) Covenant Default. Failure by the Lessee to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, including failure to make any Additional Payment, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Lessor, the Trustee or the Owners of not less than a majority in aggregate principal amount of Bonds then Outstanding; provided, however, if in the reasonable opinion of the Lessee the failure stated in the notice cannot be corrected within the applicable period, the Trustee, as assignee of the Lessor, or such Owners, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the Lessee of a case in bankruptcy, or the subjection of any right or interest of the Lessee under this Lease to any execution, garnishment or attachment, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

SECTION 9.2. Remedies on Default. Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Lessor to exercise any and all remedies available pursuant to law or granted pursuant to this Lease; provided however, there shall be no right to repossess and re-lease the Property and/or terminate this Lease. Notwithstanding anything herein or in the Trust Indenture to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE LEASE PAYMENTS OR OTHERWISE DECLARE ANY LEASE PAYMENTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE AND PAYABLE.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be, deemed to waive any other breach hereunder.

SECTION 9.6. Application of the Proceeds from the Re-Lease of the Leased Property. All amounts received by the Lessor under this Article IX (other than as provided in Section 9.2(b) herein regarding certain surplus) shall be deposited by the Trustee in the Bond Fund and credited towards the Lease Payments in the order specified by the Lessee.

SECTION 9.7. Trustee and Owners to Exercise Rights. Such rights and remedies as are given to the Lessor under this Article IX have been assigned by the Lessor to the Trustee under the Trust Indenture, to which assignment the Lessee hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners as provided in the Trust Indenture.

ARTICLE X

PREPAYMENT OF LEASE PAYMENTS

SECTION 10.1. Security Deposit. Notwithstanding any other provision of this Lease, the Lessee may, on any date, secure the payment of Lease Payments by a deposit by it with the Trustee of cash and/or Federal Securities as provided in Section 10.01 of the Trust Indenture. In such event, all obligations of the Lessee under this Lease, and all security provided by this Lease for said obligations, shall cease and terminate, excepting only the obligation of the Lessee to make, or cause to be made, Lease Payments from such deposit. On the date of said deposit title to the Leased Property shall vest in the Lessee, automatically and without further action by the Lessee or the Lessor (except as provided herein); provided that title shall be subject to the subsequent payment of Lease Payments made from said deposit in accordance with the provisions hereof. Said deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 10.2. Mandatory Prepayment From Net Proceeds. The Lessee shall be obligated to prepay the Lease Payments in whole or in part on any date, from and to the extent of any Net Proceeds theretofore deposited in the Redemption Fund pursuant to Section 5.07 of the Trust Indenture. The Lessee and the Lessor hereby agree that such Net Proceeds shall be credited towards the Lessee's obligations hereunder (except in the case of such prepayment of the Lease Payments in whole) in the order specified by the Lessee.

SECTION 10.3. Optional Prepayment. Subject to the terms and conditions of this Section, the Lessor hereby grants an option to the Lessee to prepay in whole or in part, the principal amount of Lease Payments relating to Bonds maturing in the years specified in Section 4.01(a) of the Trust Indenture, on the dates and at the redemption prices provided therein. The Lessee shall execute said option by giving written notice to the Trustee thereof at least 45 days' prior to the date of redemption and depositing with said notice (1) accrued interest on the principal amount to be prepaid to the date of redemption, plus (2) any Lease Payments then due but unpaid, plus (3) the redemption premium described in said Section 4.01(a); provided that no such prepayment shall occur in an amount of less than \$20,000 plus any premium applicable.

SECTION 10.4. Sinking Fund Redemption. The Lessee and Lessor acknowledge that the Bonds are subject to mandatory redemption from Lease Payments on the dates, at the terms and in the amounts provided in Section 4.01(c) of the Trust Indenture.

SECTION 10.5. Credit for Amounts on Deposit. In the event of prepayment of the Lease Payments in full under this Article X such that the Trust Indenture shall be discharged by its terms as a result of such prepayment, all amounts then on deposit in the Bond Fund shall be credited toward the amounts then required to be so prepaid.

SECTION 10.6. Effect of Prepayment.

(a) In Whole. In the event that the Lessee prepays all remaining Lease Payments either by making a security deposit with the Trustee as provided in Section 10.1 hereof or from Net Proceeds as provided in Section 10.2 hereof or from cash or other legally available moneys deposited by the Lessee as provided in Section 10.3, the Lessee's obligations under this Lease shall thereupon cease and terminate, including but not limited to the Lessee's obligation to continue to pay Lease Payments under this Article X.

(b) In Part. In the event the Lessee prepays less than all of the remaining principal components of the Lease Payments pursuant to Section 10.2 hereof (from Net Proceeds) or Section 10.3 hereof (from cash or other legally available moneys deposited by the Lessee), the amount of such prepayment shall be applied to reduce the principal components of the remaining Lease Payments corresponding to the resulting redemption of principal of the Bonds.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five Business Days after deposit in the United States mail in certified form, postage prepaid, to the Lessee or the Lessor, as the case may be, at the following addresses:

If to the Lessee:

City of Berkeley
2180 Milvia St.
Berkeley, CA 94704
Attention: Director of Finance

If to the Lessor:

Berkeley Joint Powers Financing Authority c/o City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: Treasurer

If to the Trustee:

700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Department

The Lessor, the Lessee and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns.

SECTION 11.3. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 11.6. Effect on Original Lease. The Original Lease is hereby amended and restated and superceded in its entirety, and the Original Lease shall be of no further force or effect.

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IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in its name by its duly authorized officers, and the Lessee has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

BERKELEY JOINT POWERS FINANCING
AUTHORITY, as Lessor

By _____

Treasurer

CITY OF BERKELEY, as Lessee

By _____

City Manager

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____2012, before me, _____,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

[Seal]

EXHIBIT A

SCHEDULE OF LEASE PAYMENTS

Bond Payment Date⁽¹⁾	Principal Component	Interest Component	Total Principal and Interest Component
--	--------------------------------	-------------------------------	---

(1) Lease Payments due on fifteenth day of prior month.

EXHIBIT B

LEGAL DESCRIPTION OF THE SITE

Recording Requested by
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**AMENDED AND RESTATED
LEASE AGREEMENT
(THEATER)**

Dated as of October 1, 2012

by and between the

BERKELEY JOINT POWERS FINANCING AUTHORITY,

as Lessor

and the

**CITY OF BERKELEY,
as Lessee**

**Relating to \$ _____
Berkeley Joint Powers Financing Authority
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Lease Refinancings)**

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Exhibit C - Legal Description of the Site

**AMENDED AND RESTATED
LEASE AGREEMENT (THEATER)**

THIS AMENDED AND RESTATED LEASE AGREEMENT (THEATER), dated as of October 1, 2012 (this "**Lease**"), by and between the BERKELEY JOINT POWERS FINANCING AUTHORITY (the "**Lessor**"), a public entity duly organized and existing under and by virtue of the Constitution and the laws of the State of California (the "**State**"), and the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and the laws of the State of California, as lessee (the "**Lessee**"), amends and restates that certain Lease Agreement, dated as of October 1, 1999, by and between the Lessor and the Lessee (the "**Original Lease**"), which was recorded on _____ as Instrument No. _____ in the Office of the Recorder of the County of Alameda;

WITNESSETH:

WHEREAS, the Lessee and the Lessor are authorized pursuant to the laws of the State to lease real property which is proper for public purposes; and

WHEREAS, in 1999, the Lessor proposed to acquire a community theater facility located within the jurisdiction of the Lessee (as further defined herein, the "**Project**") upon completion of construction thereof, together with the real property (the "**Site**") on which the Project was to be constructed, the "**Leased Property**"; and

WHEREAS, Lessor acquired the Leased Property pursuant to the Acquisition Agreement, dated as of October 1, 1999 (the "**Acquisition Agreement**"), by and between the Lessor and the Berkeley Repertory Theatre (the "**Theatre**"); and

WHEREAS, in order to provide funds to finance the acquisition by the Lessor of the Leased Property upon completion of construction of the Project, the Lessor issued its Berkeley Joint Powers Financing Authority Lease Revenue Bonds Series 1999 in the aggregate principal amount of \$9,125,000 (the "**1999 Bonds**"), pursuant to a Trust Indenture, dated as of October 1, 1999 (the "**1999 Trust Indenture**"), by and among the Lessee, the Lessor and The Bank of New York Mellon Trust Company, N.A., as trustee; and

WHEREAS, pursuant to the Original Lease, upon completion of construction of the Project and acquisition of the Leased Property by the Lessor, the Lessee leased the Leased Property from the Lessor; and

WHEREAS, Lessee subleased the Leased Property to the Theatre pursuant to a Sublease Agreement, dated as of October 1, 1999 (the "**Sublease**"); and

WHEREAS, in order to achieve debt service savings for the benefit of the residents of the City, the Lessee is issuing its Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "**Bonds**") for the purpose of refunding the 1999 Bonds; and

WHEREAS, the refunding of the 1999 Bonds with the Bonds will not result in the prepayment of the Lease Payments under the Original Lease, but will allow for the reduction in the amount of the Lease Payments reflected in the Original Lease; and

WHEREAS, the Lessor and the Lessee wish to amend and restate the Original Lease pursuant to this Lease in order to reflect the refunding of the 1999 Bonds;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the Indenture of Trust, dated as of October 1, 2012 (the "**Trust Indenture**"), by and between the Lessor and The Bank of New York Mellon Trust Company, N.A. (the "**Trustee**"), together with any amendments thereof or supplements thereto permitted to be made thereunder; and the additional terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Lease, refer to this Lease as a whole.

"**Acquisition Agreement**" means the Acquisition Agreement, dated as of October 1, 1999, by and between the Theatre and the Lessor, and any duly authorized and executed amendment thereto.

"**Applicable Environmental Law**" means and shall include, but shall not be limited to, CERCLA, RCRA, the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq., the Clean Air Act, 42 USC § 7401 et seq., HWCL, HSAA, the Porter-Cologne Act, the Air Resources Act, Cal. Health & Safety Code §§ 3900 et seq., the Safe Drinking Water & Toxic Enforcement Act, Cal. Health & Safety Code §§ 25249.5 et seq., and the regulations thereunder, and any other local, State or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (i) the existence, cleanup or remedy of contamination on property;
- (ii) the protection of the environment from spilled, deposited or otherwise emplaced contamination;
- (iii) the control of hazardous wastes; or
- (iv) the use, generation, transport, treatment, removal or recovery of Hazardous Substances, including building materials.

"**Equipment**" means the equipment listed in Exhibit B hereto included as a part of the Project, as amended from time to time.

"**Hazardous Substance**" means any substance which shall, at any time, be listed as "hazardous" or "toxic" or in the regulations implementing the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 USC §§ 9601 et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 USC §§ 6901 et seq., the California Hazardous Waste Control Law ("**HWCL**"), California Health & Safety Code §§ 25100 et seq., Hazardous Substance Account Act ("**HSAA**"), California Health & Safety Code §§ 25300 et seq., or the Porter-Cologne Water Quality Control Act, (the "**Porter-Cologne Act**"), California Water Code §§ 13000 et seq., or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Law. The term "Hazardous Substance" shall also include, without limitation, raw materials, building

components, the products of any manufacturing or other activities on the subject property, wastes, petroleum, and source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC §§ 3011 et seq., as amended).

"Leased Property" means the Site and the Project, collectively, as such property may be modified or improved from time to time.

"Lessee Representative" means the City Manager, Deputy City Manager or the Director of Finance of the Lessee, or any other person authorized by the City Manager or the City Council of the Lessee to act as Lessee Representative.

"Lessor Representative" means the Chief Administrative Officer, Treasurer or the Treasurer/Auditor of the Authority or any other person authorized by the Chief Administrative Officer or the Governing Board of the Lessor to act as Lessor Representative.

"Permitted Encumbrances" means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the Lessee may, pursuant to provisions of Section 7.7 hereof, permit to remain unpaid; (ii) this Lease and the Sublease; (iii) any contested right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date (or as of the date of execution of an amendment to this Lease, in the event of an amendment of the Project) and which the Lessee certifies in writing will not materially impair the use of the Leased Property by the Lessee; (v) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Guaranty Company; and (vi) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Lease and to which the Lessor and the Lessee consent in writing.

"Project" means the theater to be constructed by the Theatre, acquired by the Authority pursuant to the Acquisition Agreement, leased to the City pursuant to this Lease and sublet to the Theatre pursuant to the Sublease, as more particularly described in Exhibit B hereto, as amended from time to time.

"Site" means the site described in Exhibit C to this Lease, as amended from time to time.

"Sublease" means the Sublease by and between the City of Berkeley, California and the Theatre, dated as of the date hereof, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with its terms.

"Theatre" means Berkeley Repertory Theatre, a California nonprofit public benefit corporation.

SECTION 1.2. Exhibits. The following Exhibits are attached to, and by reference made a part of, this Lease:

Exhibit A: Schedule of Lease Payments to be paid by the Lessee to the Lessor, showing the Lease Payment Date and amount of each Lease Payment.

Exhibit B: General Description of the Project.

Exhibit C: Legal Description of the Site.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants to the Lessor as follows:

(a) Due Organization and Existence. The Lessee is a charter city duly organized and existing under its charter and the Constitution of the State.

(b) Authorization; Enforceability. The Constitution and laws of the State, including the charter of the Lessee, authorize the Lessee to enter into the Original Lease, this Lease and the Sublease, and to enter into the transactions contemplated by and to carry out its obligations under the aforesaid Agreements; the Lessee has duly authorized and executed the aforesaid Agreements. This Lease and the Sublease constitute the legal, valid, binding and enforceable obligations of the Lessee in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default; No Liens or Encumbrances. Neither the execution and delivery of this Lease or the Sublease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Leased Property except for Permitted Encumbrances and the pledges contained in the Trust Indenture.

(d) Execution and Delivery. The Lessee has duly authorized and executed this Lease and the Sublease in accordance with the Constitution and laws of the State, including the charter of the City.

(e) Indemnification of Lessor. The Lessee covenants to defend, indemnify and hold harmless the Lessor and its directors, officers and employees (collectively, the "**Indemnified Party**") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Lease, and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Lease. In particular, without limitation, the Lessee shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the

use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the Lessee, (ii) any breach or default on the part of the Lessee in the performance of any of its obligations under this Lease, (iii) any act or negligence of the Lessee or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, or (iv) any act or negligence of any assignee or sublessee of the Lessee with respect to the Leased Property. No indemnification is made under this Section or elsewhere in this Lease for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct, negligence, or breach of duty under this Lease by the Lessor, its officers, agents, employees, successors or assigns.

(f) General Tax and Arbitrage Covenant. In order to preserve the tax-exempt nature of interest on the Bonds, Lessee covenants as follows:

(i) *Private Business Use Limitation.* Lessee shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(ii) *Federal Guarantee Prohibition.* Lessee may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(iii) *No Arbitrage.* Lessee may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(iv) *Maintenance of Tax Exemption.* Lessee shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

(v) *Rebate of Excess Investment Earnings to United States.* Lessee shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. Lessee shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by Lessee from any source of legally available funds of Lessee, and shall constitute Additional Rental Payments hereunder.

Lessee shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subparagraph (v). In order to provide for the administration of this subparagraph (v), Lessee may provide for the employment of independent attorneys, accountants and consultants compensated on such

reasonable basis as Lessee may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by Lessee of any of the requirements under this subparagraph (v).

SECTION 2.2. Representations, Covenants and Warranties of the Lessor. The Lessor represents, covenants and warrants to the Lessee as follows:

(a) Due Organization and Existence; Enforceability. The Lessor is a public entity duly organized, existing under and by virtue of the laws of the State, has the power to enter into this Lease, the Acquisition Agreement and the Trust Indenture and to issue the Bonds; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid Agreements and the issuance of the Bonds. This Lease, the Acquisition Agreement and the Trust Indenture constitute the legal, valid, binding and enforceable obligations of the Lessor in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(b) No Conflicts or Defaults: No Liens or Encumbrances. Neither the execution and delivery of this Lease, the Acquisition Agreement or the Trust Indenture, nor the issuance of the Bonds, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the Joint Exercise of Powers Agreement or Bylaws, if any, of the Lessor or any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Leased Property except by Permitted Encumbrances and by the pledge contained in the Trust Indenture.

(c) Execution and Delivery. The Lessor has duly authorized and executed this Lease, the Acquisition Agreement and the Trust Indenture in accordance with the Constitution and laws of the State.

(d) Tax Covenants. Lessor will comply with its covenants in Section 6.07 of the Trust Indenture.

ARTICLE III

DEPOSIT OF BOND PROCEEDS; COMPLETION OF THE PROJECT; FURTHER ASSURANCES

SECTION 3.1. Deposit of Bond Proceeds. On the Closing Date the Lessor agrees to pay or cause to be paid to the Trustee moneys to be deposited with the Trustee as provided in Section 3.02 of the Trust Indenture.

SECTION 3.2. Completion: Certification. The Project was completed and acquired by Lessor pursuant to the Acquisition Agreement.

SECTION 3.3. Further Assurances and Corrective Instruments. The Lessor and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be

executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

ARTICLE IV

AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS

SECTION 4.1. Lease. The Lessor hereby leases the Leased Property to the Lessee, and the Lessee hereby leases the Leased Property from the Lessor, upon the terms and conditions set forth herein.

SECTION 4.2. Term. The term of this Lease shall commence on the date of recordation of a grant deed evidencing fee title to the Leased Property held in the name of the Lessor and shall end on October 1, 2029, unless extended pursuant to Section 4.3, or unless terminated prior thereto upon the earliest of any of the following events:

(a) Default and Termination. A default by the Lessee and the Lessor's election to terminate this Lease under Section 9.2(b) hereof;

(b) Payment of All Lease Payments. The payment by or on behalf of the Lessee of all lease payments (the "**Lease Payments**") required under Section 4.4 hereof and any additional payments required under Section 4.11 hereof;

(c) Prepayment by Deposit of Security. The deposit of funds or Federal Securities with the Trustee in amounts sufficient to pay all Lease Payments as the same shall become due, as provided by Section 10.1 hereof and as provided by Section 10.01 of the Trust Indenture; or

(d) Prepayment. Upon the exercise by or on behalf of the Lessee of the option to prepay the Lease Payments or any portion thereof as provided in Section 7.3; provided, however, that the Lease shall be terminated with respect to any item of or portion of the Equipment, if any, title to which is transferred to the Lessee upon the end of its useful life. The Lessee hereby represents, warrants and covenants that the useful life of any item of Equipment is correctly indicated on Exhibit B hereto.

SECTION 4.3. Extension of Lease Term. If on October 1, 2029, the Bonds shall not be fully paid, or if the Lease Payments hereunder shall have been abated at any time and for any reason, then the Term shall be extended until all Bonds shall be fully paid, except that the Term shall in no event be extended beyond October 1, 2039.

SECTION 4.4. Lease Payments.

(a) Time and Amount. Subject to the provisions of Section 4.10 (regarding abatement in event of loss of use of any portion of the Leased Property) and Article X (regarding prepayment of Lease Payments), the Lessee agrees to pay to the Lessor, its successors and assigns, as annual rental for the use and possession of the Leased Property, the Lease Payments (denominated into components of principal and interest, the interest components being paid semiannually) in the amounts specified in Exhibit A, to be due and payable in arrears

on the third to the last day of the month (or if such day is not a Business Day, the immediately preceding Business Day), if such payment is by check, or the last day of the month (or if such day is not a Business Day, the immediately preceding Business Day), if such payment is by wire transfer, immediately preceding the respective Payment Dates specified in Exhibit A (each a "**Lease Payment Date**").

(b) [Reserved.]

(c) Credits. Any amount held in the Principal Account and Interest Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole pursuant to Section 10.2 hereof and other amounts required for payment of past due principal with respect to any Bonds not presented for payment or interest), in excess of an amount equal to the principal and interest due and payable on the Bonds on the next Interest Payment Date less the Lease Payment then due and payable, shall be credited towards the Lease Payment then due and payable. No Lease Payment need be made on any Lease Payment Date if the amounts then held in the Principal Account and Interest Account are at least equal to the Lease Payment then required to be paid.

(d) Rate on Overdue Payments. In the event the Lessee should fail to make any of the Lease Payments required in this Section, the Lease Payment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent permitted by law, from the date such amount was originally payable at the rate equal to the highest original interest rate payable on the Bonds.

SECTION 4.5. No Withholding. Notwithstanding any dispute between the Lessor and the Lessee, including a dispute as to the failure of any portion of the Leased Property in use by or possession of the Lessee to perform the task for which it is leased, the Lessee shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

SECTION 4.6. Fair Rental Value. The Lease Payments and Additional Payments shall be paid by the Lessee in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Leased Property during each such period for which said rental is to be paid. The parties hereto have agreed and determined that such total rental represents the fair rental value of the Leased Property. In making such determination, consideration has been given to the Project Costs, other obligations of the parties under this Lease (including but not limited to costs of maintenance, taxes and insurance), the value of the Lessor's fee interest in the Site, the uses and purposes which may be served by the Leased Property, and the benefits therefrom which will accrue to the Lessee and the general public. In the event that the Lessee and the Trustee, as assignee of the Lessor, agree subsequent to the date hereof that Lease Payments, Additional Payments and Reserve Replenishment Rent hereunder are less than the fair rental value of the Leased Property, the Lessee and the Trustee may mutually agree that the Lessee shall increase the Lease Payments and Additional Payments payable hereunder to reflect such fair rental value; provided, however, that the Trustee may rely upon an independent MAI appraisal or other appraisal performed by an independent third party reasonably acceptable to the Lessee.

SECTION 4.7. Budget and Appropriation. The Lessee covenants to take such action as may be necessary to include all Lease Payments (other than the Lease Payments of advance

rental) and Additional Payments (to the extent such Additional Payments are known to the Lessee at the time its annual budget is proposed), due hereunder in its annual budget and to make the necessary annual appropriations therefor. During the Term, the Lessee will furnish annually to the Trustee a certificate of the Lessee Representative stating that all Lease Payments and Additional Payments due hereunder for the applicable Fiscal Year have been included in its annual budget and the amount so included. The covenants on the part of the Lessee herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the ministerial duty of each and every public official of the Lessee to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Lessee to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the Lessee.

SECTION 4.8. Assignment of Lease Payments. Certain of the Lessor's rights under this Lease, including the right to receive and enforce payment of the Lease Payments to be made by the Lessee hereunder, have been assigned to the Trustee, subject to certain exceptions, pursuant to the Trust Indenture, to which assignment the Lessee hereby consents. The Lessor hereby directs the Lessee, and the Lessee hereby agrees to pay to the Trustee at the Trustee's Office all Lease Payments or prepayments thereof payable by the Lessee hereunder. The Lessor will not assign or pledge the Lease Payments or other amounts derived from the Leased Property and from its other rights under this Lease except as provided under the terms of this Lease, or its duties and obligations except as provided under the Trust Indenture.

SECTION 4.9. Use and Possession. The total Lease Payments due in any Fiscal Year (other than the Lease Payments of advance. rental) shall be for the use and possession of the Leased Property for such Fiscal Year.

SECTION 4.10. Abatement of Lease Payments in Event of Loss of Use. The obligation of the Lessee to pay Lease Payments shall be abated during any period in which by reason of damage, destruction or taking by eminent domain or condemnation with respect to any portion of the Leased Property there is substantial interference with the use and possession of such portion of the Leased Property by the Lessee. The amount of such abatement shall be established by the Lessee, who shall obtain an independent MAI appraisal, which determination shall be such that the resulting Lease Payments represent fair consideration for the use and possession of the portion of the Leased Property not damaged, destroyed or taken. Such abatement shall continue for the period commencing with such damage, destruction or taking and ending with the substantial completion of the replacement or work or repair. Except as provided herein, in the event of any such damage, destruction or taking, this Lease shall continue in full force and effect and the Lessee waives any right to terminate this Lease by virtue of any such damage, destruction or taking. There shall be no abatement of Lease Payments to the extent that moneys derived from any person as a result of any defect or delay in the construction or equipping, as applicable, of any item or portion of the Leased Property, are available to pay the amount which would otherwise be abated. Notwithstanding the foregoing sentence, however, there shall be no abatement if the Bond Fund is available to pay the amount which would otherwise be abated.

SECTION 4.11. Additional Payments. In addition to the Lease Payments, the Lessee shall also pay such amounts ("**Additional Payments**") as shall be required for the payment of all administrative costs of the Lessor relating to the Leased Property or the Bonds, including without limitation all expenses, compensation and indemnification of the Trustee payable by the Lessor under the Trust Indenture, taxes of any sort whatsoever payable by the Lessor as a result of its ownership of the Leased Property or undertaking of the transactions contemplated

herein or in the Trust Indenture, fees of auditors, accountants, attorneys or engineers, and all other necessary administrative costs of the Lessor or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Bonds or of the Trust Indenture (including any rebate payments to the federal government pursuant to Section 6.07 of the Trust Indenture) or to indemnify the Lessor and its officers and governing board members.

SECTION 4.12. Net-Net-Net Lease. This Lease shall be deemed and construed to be a "net-net-net lease" and the Lessee hereby agrees that the Lease Payments shall be an absolute net return to the Lessor, free and clear of any expenses, charges or set-offs whatsoever, except as expressly provided herein.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability.

(a) Coverage. The Lessee shall maintain or cause to be maintained, throughout the Term hereof, a standard comprehensive general liability insurance policy or policies in protection of the Lessee and its officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily injury, death or property damage occasioned by reason of the use or operation of the Leased Property.

(b) Limits. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for bodily injury or death of each person and \$3,000,000 for bodily injury or deaths of two or more persons in each accident or event (subject to a deductible clause of not to exceed \$250,000), and in a minimum amount of \$150,000 for damage to property resulting from each accident or event. Such public liability and property damage liability insurance may, however, be in the form of a single limit policy in the minimum amount of \$4,000,000 covering all such risks.

(c) Joint or Self-Insurance. Subject to the provisions of Section 5.6(d) below, such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the Lessee or the Theatre, and may be maintained in the form of self-insurance by the Lessee.

(d) Payment of Net Proceeds. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.2. Worker's Compensation. The Lessee shall also maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Subject to the provisions of Section 5.6(d) below, such worker's compensation insurance may be maintained in the form of self-insurance by the Lessee.

SECTION 5.3. Casualty and Theft Insurance.

(a) Casualty and Theft Insurance: Coverage. The Lessee shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, insurance against loss or damage to any portion of the Leased Property by fire and lightning, with extended coverage, and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Said insurance shall also cover loss or damage to any portion of the Leased Property from earthquake; provided that the Lessee shall have no obligation to obtain earthquake insurance if the Lessee certifies to the Trustee annually on or before each October 1 that such insurance is not commercially available at reasonable cost.

(b) Amount. Such insurance shall be in an amount at least equal to the greater of (i) 100% of the replacement cost (without deducting for depreciation) of all structures constituting part of the Leased Property (excluding the cost of excavation, of grading and filling, and of the land) and (ii) the aggregate principal amount of Bonds at the time Outstanding. Other than earthquake insurance, such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Earthquake insurance, if any, may be subject to deductible clauses of not to exceed 10% of such replacement cost for any one loss.

(c) Joint Insurance. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the Lessee or the Theatre.

(d) Payment of Net Proceeds. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Insurance and Condemnation Fund and applied as provided in Section 6.1.

SECTION 5.4. Rental Interruption Insurance.

(a) Coverage and Amount. The Lessee shall maintain or cause to be maintained rental income or use and occupancy insurance in an amount not less than the maximum remaining scheduled Lease Payments in any future 24-month period, to insure against loss of rental income from the Leased Property caused by perils covered by the insurance required to be maintained as provided in Section 5.3 hereof. Such insurance shall be obtained as each portion of such Leased Property becomes subject to this Lease.

(b) Joint Insurance; No Self Insurance. Such insurance may be maintained as part of or in conjunction with any other rental income insurance carried by the Lessee or the Theatre. Rental interruption insurance may not be maintained in the form of self-insurance by the Lessee.

(c) Payment of Net Proceeds. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Bond Fund, to be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

SECTION 5.5. Title Insurance. The Lessee shall maintain or cause to be maintained, throughout the Term of this Lease, title insurance on the Site insuring the Lessee's leasehold estate in the Site, subject only to Permitted Encumbrances, in the form of a CLTA leasehold title policy in an amount equal to the principal amount of the Bonds Outstanding, issued by a

company of recognized standing, duly authorized to issue the same, payable to the Trustee for the benefit of the Owners of the Bonds. The Net Proceeds of such insurance shall be applied as provided in Section 6.1(a).

SECTION 5.6. General Insurance Provisions.

(a) Form of Policies. All policies of insurance required to be procured and maintained pursuant to this Lease and any statements of self-insurance shall be in form certified by an insurance agent, broker or consultant to the Lessee to comply with the provisions hereof. A copy of such certification shall be sent to the Trustee. All such policies shall provide that the Lessee shall give the Trustee 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. Each policy of insurance required to be procured and maintained pursuant to Section 5.3 (regarding casualty and theft insurance), Section 5.4 (regarding rental interruption insurance) and Section 5.5 (regarding title insurance) shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Owners.

(b) Payment of Premiums. The Lessee shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease.

(c) Protection of the Trustee. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

(d) Self-Insurance. The Lessee may elect to self-insure as permitted herein. It may only make such election if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Lessor, the Lessee, the Theatre and the Trustee, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by counties in the State other than the Lessee. If the Lessee elects to provide self-insurance pursuant to this Section, the Lessee shall on the date on which the Lessee elects to self-insure, and annually thereafter, cause to be delivered to the Trustee a certificate of the Risk Manager of the Lessee or an independent actuary or insurance consultant certifying to the adequacy of the Lessee's reserves for such self-insurance.

(e) Evidence of Insurance. The Lessee shall cause to be delivered to the Trustee annually a certificate of the Lessee Representative stating that all the insurance policies required by this Lease are in full force and effect. Insurance maintained by the Theatre under the Sublease shall satisfy the requirements of the parallel provisions herein set forth.

SECTION 5.7. Cooperation. The Lessor shall cooperate fully with the Lessee at the expense of the Lessee in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any portion thereof.

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. Application of Net Proceeds.

(a) Deposit in Insurance and Condemnation Fund. Pursuant to Section 5.07 of the Trust Indenture, the Trustee shall deposit Net Proceeds of insurance which it receives in the Insurance and Condemnation Fund as provided in Section 5.3 (regarding casualty and theft insurance) and Section 5.5 (regarding title insurance) promptly upon receipt thereof. The Lessee and/or the Lessor shall transfer to the Trustee any other Net Proceeds received by the Lessee and/or Lessor in the event of any accident, destruction, theft or taking by eminent domain or condemnation with respect to the Leased Property, for deposit in the Insurance and Condemnation Fund.

(b) Disbursement for Replacement or Repair of the Leased Property. Upon receipt of the certification described in paragraph (1) below and the requisition described in paragraph (2) below, the Trustee shall disburse moneys in the Insurance and Condemnation Fund to the person, firm or corporation named in the requisition as provided in Section 5.07 of the Trust Indenture.

(1) Certification. The Lessee Representative must certify to the Lessor and the Trustee that:

(i) Sufficiency of Net Proceeds. The Net Proceeds available for such purpose, together with any other funds supplied by the Lessee for such purpose, are sufficient therefor, and

(ii) Timely Completion. In the event that damage or destruction results in an abatement of Lease Payments, such replacement or repair can be fully completed within a period not in excess of the period in which rental interruption insurance proceeds will be available to pay in full all Lease Payments coming due during such period as described in Section 5.4.

(2) Requisition. The Lessee Representative must state with respect to each payment to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due, (iii) the amount to be paid and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

Any balance of the Net Proceeds remaining after such replacement or repair has been completed and after payment or provision for redemption of all Bonds as provided in Section 5.07 of the Trust Indenture shall be paid to the Lessee.

(c) Disbursement for Prepayment. If the Lessee Representative notifies the Trustee in writing of the Lessee's determination that the certification provided in Section 6.1(b)(1) cannot be made and replacement or repair of any portion of the Leased Property is not economically feasible or in the best interest of the Lessee, then the Trustee shall promptly transfer the Net

Proceeds to the Redemption Fund as provided in Section 5.07(b) of the Trust Indenture and apply them to redemption of the Bonds as provided in Section 4.01 of the Trust Indenture and prepayment of Lease Payments as provided in Section 10.2 hereof; provided that in the event of damage or destruction in whole of the Leased Property and in the event such Net Proceeds, together with funds then on hand and available for such purpose in the Bond Fund are not sufficient to redeem all the Bonds then Outstanding, then the Lessee shall not be permitted to certify that repair, replacement or improvement of all of the Leased Property is not economically feasible or in the best interest of the Lessee. In such event, the Lessee shall proceed to repair, replace or improve the Leased Property as described herein from legally available funds in the then current fiscal year and shall make the required notification to the Trustee pursuant to Section 5.07(b) of the Trust Indenture and the Trustee shall disburse moneys in the Insurance and Condemnation Fund to the person, firm, or corporation named in the Requisition as provided therein.

ARTICLE VII

COVENANTS WITH RESPECT TO THE LEASED PROPERTY

SECTION 7.1. Use of the Leased Property. The Lessee represents and warrants that it has an immediate need for, and expects to make immediate use of, all of the Leased Property, which need is not temporary or expected to diminish in the foreseeable future. The Lessee agrees not to give priority in the appropriation of funds for the acquisition or use of any additional equipment or facilities, as the case may be, performing functions similar to that performed by the Leased Property if such priority would adversely affect the interests of the Owners of the Bonds.

SECTION 7.2. Title to the Leased Property.

(a) Lessor Holds Title During Term. During the Term of this Lease, the Lessor does and shall hold title to the Leased Property and any and all additions which comprise remodeling, replacements or modifications. The Lessee shall take any and all actions reasonably required, including but not limited to executing and filing any and all documents reasonably required, to maintain and evidence the Lessor's title to and interest in the Leased Property at all times during the Term of this Lease.

(b) Title Transferred to Lessee at End of Term. Upon expiration of the Term as provided in Section 4.2 hereof (except if such expiration is caused by a default of the Lessee as described in Section 4.2(a)), all right, title and interest of the Lessor in and to all of the Leased Property shall be transferred to and vest in the Lessee without the necessity of any additional document of transfer.

SECTION 7.3. Option to Prepay. The Lessee may exercise an option to prepay the Lease Payments and to purchase the Leased Property or any portion thereof by paying a prepayment price therefor equal to the amounts necessary to cause the termination of the Term for the Leased Property or portion thereof as provided in Section 4.2 hereof.

SECTION 7.4. Quiet Enjoyment. During the Term, the Lessor shall provide the Lessee with quiet use and enjoyment of the Leased Property, and the Lessee shall during such Term peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Lessor, or any person or entity claiming under or through the Lessor except as expressly set forth in this Lease. The Lessor will, at the request of the Lessee, join in any

legal action in which the Lessee asserts its right to such possession and enjoyment to the extent the Lessor may lawfully do so. Notwithstanding the foregoing, the Lessor shall have the right to inspect the Leased Property as provided in Section 7.6 hereof.

SECTION 7.5. Installation of Lessee's Personal Property. The Lessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon any portion of the Leased Property. All such items shall remain the sole personal property of the Lessee, regardless of the manner in which the same may be affixed to such portion of the Leased Property, in which neither the Lessor nor the Trustee shall have any interest, and may be modified or removed by the Lessee at any time; provided that the Lessee shall repair and restore any and all damage to such portion of the Leased Property resulting from the installation, modification or removal of any such items of equipment. Nothing in this Lease shall prevent the Lessee from purchasing items to be installed pursuant to this Section, provided that no lien or security interest shall attach to any part of the Leased Property.

SECTION 7.6. Access to the Leased Property. The Lessee agrees that the Lessor, any Lessor Representative and the Lessor's successors, assigns or designees shall have the right at all reasonable times to enter upon the Leased Property or any portion thereof to examine and inspect the Leased Property. The Lessee further agrees that the Lessor, any such Representative, and the Lessor's successors, assigns or designees shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the Lessee to perform its obligations hereunder.

SECTION 7.7. Maintenance, Utilities, Taxes and Assessments.

(a) Maintenance: Repair and Replacement. Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all repair and maintenance of the Leased Property shall be the responsibility of the Lessee, and the Lessee shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the Lessee or any sublessee thereof. In exchange for the Lease Payments herein provided, the Lessor agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The Lessee waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the Lessee under the terms of this Lease.

(b) Tax and Assessments; Utility Charges. The Lessee shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges of any type or nature charged to the Lessor or the Lessee or levied, assessed or charged against any portion of the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

(c) Contests. The Lessee may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided that prior to such nonpayment it shall furnish the Lessor and the Trustee with the Opinion of Counsel, to the effect that, by nonpayment of any such items, the interest of the Lessor in such portion of the Leased Property

will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. Otherwise, the Lessee shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Lessor. The Lessor will cooperate fully in such contest, upon the request and at the expense of the Lessee.

SECTION 7.8. Modification of the Leased Property.

(a) Additions, Modifications and Improvements. The Lessee shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Leased Property if such improvements are necessary or beneficial for the use of such portion of the Leased Property. All such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the Leased Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would impair the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and the Leased Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Leased Property immediately prior to the making of such additions, modifications and improvements.

(b) No Liens. Except for Permitted Encumbrances, the Lessee will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Lessee pursuant to this Section; provided that if any such lien is established and the Lessee shall first notify or cause to be notified the Lessor of the Lessee's intention to do so, the Lessee may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Lessor with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Trustee as assignee of the Lessor. The Lessor will cooperate fully in any such contest, upon the request and at the expense of the Lessee.

SECTION 7.9. Encumbrances; Alternative Financing Methods.

(a) Encumbrances. Except as provided in this Article VII (including without limitation Section 7.8 hereof and this Section 7.9), the Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, liens, charges, encumbrances or claims, as applicable, on or with respect to the Leased Property, other than Permitted Encumbrances and other than the respective rights of the Lessor and the Lessee as herein provided. Except as expressly provided in this Article VII, the Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time; provided that the Lessee may contest such liens if it desires to do so. The Lessee shall reimburse the Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, change, encumbrance or claim.

(b) Alternative Financing Methods: Notwithstanding the foregoing, the Lessee may create or suffer to create any mortgage, pledge, liens, charges, encumbrances or claims upon the Leased Property or any improvements thereto, provided that (1) any such mortgage, pledge, liens, charges, encumbrances or claims shall at any time while any of the Bonds remain

Outstanding be and remain subordinate in all respects to the Lease and any security interest given to the Trustee for the benefit of the Owners and (2) the Lessee shall have first delivered to the Trustee an opinion of Bond Counsel substantially to the effect that such mortgage, pledge, liens, charges, encumbrances or claims would not result in the inclusion of the interest on the Bonds in the gross income of the owners of the Bonds for purposes of federal income taxation or impair the State tax-exempt status of such payments.

SECTION 7.10. Lessor's Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE LESSEE OF THE LEASED PROPERTY OR ANY PORTION THEREOF. THE LESSEE ACKNOWLEDGES THAT THE LESSOR IS NOT A MANUFACTURER OF PORTIONS OF THE LEASED PROPERTY, AND THAT THE LESSEE IS LEASING THE LEASED PROPERTY AS IS. In no event shall the Lessor or its assigns be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease, the Acquisition Agreement or the Trust Indenture for the existence, furnishing, functioning or Lessee's use and possession of the Leased Property.

SECTION 7.11. [Reserved.]

SECTION 7.12. Environmental Matters.

(a) The Lessee will comply with Applicable Environmental Law and shall not use, store, generate, treat, transport or dispose of any Hazardous Substance on, or in a manner that would cause it to later flow, migrate, leak, leach or otherwise come to rest on or in the Project or the Site.

(b) The Lessee will transmit copies of all records concerning the contact with any local, State or federal agency concerning any violation of any Applicable Environmental Law involving the Project or the Site, and all notices, orders or statements received from any governmental entity concerning violations of Applicable Environmental Law with respect to the Project or the Site and any operations conducted thereon or any conditions existing thereon to the Trustee. The Lessee shall notify the Trustee in writing immediately of any release, discharge, spill or deposit of any Hazardous Substance that has occurred or is occurring which in any way affects or threatens to affect the Project or the Site, or the people, structures, equipment or other property thereon.

(c) The Lessee shall permit the Lessor, its agents or any experts designated by the Lessor to have full access to the Project and the Site during reasonable business hours for purposes of such independent investigation of compliance with Applicable Environmental Law.

SECTION 7.13. [Reserved.]

SECTION 7.14. [Reserved.]

SECTION 7.15. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Lease and the Indenture, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee may (and, at the request of the Original Purchaser or the Owner of at least 25% aggregate principal amount of Outstanding Bonds, shall) or any Owner of Bonds or

Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this paragraph. For purposes of this paragraph, "Beneficial Owner" means any person which (a) has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

ARTICLE VIII

ASSIGNMENT, SUBLEASING AND AMENDMENT

SECTION 8.1. Assignment by the Lessor. Except as provided herein and in the Trust Indenture, the Lessor will not assign this Lease to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in Section 2.2 hereof.

SECTION 8.2. Assignment and Subleasing by the Lessee.

(a) Assignment. This Lease may be assigned by the Lessee so long as such assignment does not, in the opinion of Bond Counsel, adversely affect the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest on the Bonds. In the event that this Lease is assigned by the Lessee, the obligation to make Lease Payments hereunder shall remain the obligation of the Lessee.

(b) Sublease. The Lessee may sublease all or any portion of the Leased Property, with the consent of the Trustee as assignee of the Lessor, subject to all of the following conditions:

(i) This Lease and the obligation of the Lessee to make Lease Payments hereunder shall remain obligations of the Lessee;

(ii) The Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Lessor and the Trustee a true and complete copy of such sublease;

(iii) No sublease by the Lessee shall cause the Leased Property to be used for a purpose other than a function authorized under the provisions of the laws of the State; and

(iv) No sublease shall cause the interest on the Bonds to become subject to federal income taxes or State personal income taxes.

SECTION 8.3. Amendments and Modifications. Subject to the conditions set forth in this Section 8.3, this Lease may be amended or any of its terms modified with the written consent of the Lessee and the Trustee as assignee of the Lessor. Without the written consent of the Trustee, the Lessee will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Lease, excepting only as such alteration or modification may be permitted by Section 9.05 of the Trust Indenture.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be "**events of default**" under this Lease and the terms "**events of default**" and "**default**" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the Lessee to pay any Lease Payment required to be paid hereunder by the next succeeding Payment Date following each corresponding Lease Payment Date; provided, however, that such failure shall not constitute an event of default if the amounts so unpaid have been transferred from a special fund source to the Principal Account and Interest Account to make such Lease Payments pursuant to the terms of the Trust Indenture.

(b) Covenant Default. Failure by the Lessee to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, including failure to make any Additional Payment, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Lessor, the Trustee or the Owners of not less than a majority in aggregate principal amount of Bonds then Outstanding; provided, however, if in the reasonable opinion of the Lessee the failure stated in the notice cannot be corrected within the applicable period, the Trustee, as assignee of the Lessor, or such Owners, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the Lessee of a case in bankruptcy, or the subjection of any right or interest of the Lessee under this Lease to any execution, garnishment or attachment, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

SECTION 9.2. Remedies on Default. Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Lessor to exercise any and all remedies available pursuant to law or granted pursuant to this Lease; provided however, there shall be no right to repossess and re-lease the Property and/or terminate this Lease. Notwithstanding anything herein or in the Trust Indenture to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE LEASE PAYMENTS OR OTHERWISE DECLARE ANY LEASE PAYMENTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE AND PAYABLE.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall

impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be, deemed to waive any other breach hereunder.

SECTION 9.6. Application of the Proceeds from the Re-Lease of the Leased Property. All amounts received by the Lessor under this Article IX (other than as provided in Section 9.2(b) herein regarding certain surplus) shall be deposited by the Trustee in the Bond Fund and credited towards the Lease Payments in the order specified by the Lessee.

SECTION 9.7. Trustee and Owners to Exercise Rights. Such rights and remedies as are given to the Lessor under this Article IX have been assigned by the Lessor to the Trustee under the Trust Indenture, to which assignment the Lessee hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners as provided in the Trust Indenture.

ARTICLE X

PREPAYMENT OF LEASE PAYMENTS

SECTION 10.1. Security Deposit. Notwithstanding any other provision of this Lease, the Lessee may, on any date, secure the payment of Lease Payments by a deposit by it with the Trustee of cash and/or Federal Securities as provided in Section 10.01 of the Trust Indenture. In such event, all obligations of the Lessee under this Lease, and all security provided by this Lease for said obligations, shall cease and terminate, excepting only the obligation of the Lessee to make, or cause to be made, Lease Payments from such deposit. On the date of said deposit title to the Leased Property shall vest in the Lessee, automatically and without further action by the Lessee or the Lessor (except as provided herein); provided that title shall be subject to the subsequent payment of Lease Payments made from said deposit in accordance with the provisions hereof. Said deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 10.2. Mandatory Prepayment From Net Proceeds. The Lessee shall be obligated to prepay the Lease Payments in whole or in part on any date, from and to the extent of any Net Proceeds theretofore deposited in the Redemption Fund pursuant to Section 5.07 of the Trust Indenture. The Lessee and the Lessor hereby agree that such Net Proceeds shall be credited towards the Lessee's obligations hereunder (except in the case of such prepayment of the Lease Payments in whole) in the order specified by the Lessee.

SECTION 10.3. Optional Prepayment. Subject to the terms and conditions of this Section, the Lessor hereby grants an option to the Lessee to prepay in whole or in part, the principal amount of Lease Payments relating to Bonds maturing in the years specified in Section 4.01(a) of the Trust Indenture, on the dates and at the redemption prices provided therein. The Lessee shall execute said option by giving written notice to the Trustee thereof at least 45 days' prior to the date of redemption and depositing with said notice (1) accrued interest on the principal amount to be prepaid to the date of redemption, plus (2) any Lease Payments then due but unpaid, plus (3) the redemption premium described in said Section 4.01(a); provided that no such prepayment shall occur in an amount of less than \$20,000 plus any premium applicable.

SECTION 10.4. Sinking Fund Redemption. The Lessee and Lessor acknowledge that the Bonds are subject to mandatory redemption from Lease Payments on the dates, at the terms and in the amounts provided in Section 4.01(c) of the Trust Indenture.

SECTION 10.5. Credit for Amounts on Deposit. In the event of prepayment of the Lease Payments in full under this Article X such that the Trust Indenture shall be discharged by its terms as a result of such prepayment, all amounts then on deposit in the Bond Fund shall be credited toward the amounts then required to be so prepaid.

SECTION 10.6. Effect of Prepayment.

(a) In Whole. In the event that the Lessee prepays all remaining Lease Payments either by making a security deposit with the Trustee as provided in Section 10.1 hereof or from Net Proceeds as provided in Section 10.2 hereof or from cash or other legally available moneys deposited by the Lessee as provided in Section 10.3, the Lessee's obligations under this Lease shall thereupon cease and terminate, including but not limited to the Lessee's obligation to continue to pay Lease Payments under this Article X.

(b) In Part. In the event the Lessee prepays less than all of the remaining principal components of the Lease Payments pursuant to Section 10.2 hereof (from Net Proceeds) or Section 10.3 hereof (from cash or other legally available moneys deposited by the Lessee), the amount of such prepayment shall be applied to reduce the principal components of the remaining Lease Payments corresponding to the resulting redemption of principal of the Bonds.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five Business Days after deposit in the United States mail in certified form, postage prepaid, to the Lessee or the Lessor, as the case may be, at the following addresses:

If to the Lessee:

City of Berkeley
2180 Milvia St.
Berkeley, CA 94704
Attention: Director of Finance

If to the Lessor:

Berkeley Joint Powers Financing Authority c/o City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: Treasurer

If to the Trustee:

700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Department

The Lessor, the Lessee and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns.

SECTION 11.3. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 11.6. Effect on Original Lease. The Original Lease is hereby amended and restated and superceded in its entirety, and the Original Lease shall be of no further force or effect.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in its name by its duly authorized officers, and the Lessee has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

BERKELEY JOINT POWERS FINANCING
AUTHORITY, as Lessor

By _____

Treasurer

CITY OF BERKELEY, as Lessee

By _____

City Manager

**ACKNOWLEDGED AND
CONSENTED TO:**

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as trustee

Authorized Officer

EXHIBIT A

SCHEDULE OF LEASE PAYMENTS

Bond Payment Date⁽¹⁾	Principal Component	Interest Component	Total Principal and Interest Component
--	--------------------------------	-------------------------------	---

(1) Lease Payments due on fifteenth day of prior month.

EXHIBIT B

GENERAL DESCRIPTION OF THE PROJECT

The theater as described in the plans and specifications covered by the attached building permits.

EXHIBIT C

LEGAL DESCRIPTION OF THE SITE

Recording Requested By:)
City of Berkeley)
)
When Recorded Mail To:)
Jones Hall, A Professional Law Corporation)
650 California Street, 18th Floor)
San Francisco, California 94108)
Attn: Christopher K. Lynch)

This document is recorded for the benefit of the City of Berkeley and recording is fee exempt under §27383 of the Government Code.

**AMENDED AND RESTATED
LEASE/PURCHASE AGREEMENT**

Dated as of October 1, 2012

by and between the

BERKELEY JOINT POWERS FINANCING AUTHORITY,

as Lessor

and the

**CITY OF BERKELEY,
as Lessee**

Relating to \$_____
Berkeley Joint Powers Financing Authority
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Lease Refinancings)

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Exhibit A - Schedule of Lease Payments
Exhibit B - General Description of the Project
Exhibit C - Legal Description of the Site

**AMENDED AND RESTATED
LEASE/PURCHASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE/PURCHASE AGREEMENT, dated as of October 1, 2012 (this "**Lease**"), by and between the BERKELEY JOINT POWERS FINANCING AUTHORITY (the "**Lessor**"), a public entity duly organized and existing under and by virtue of the Constitution and the laws of the State of California (the "**State**"), and the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and the laws of the State of California, as lessee (the "**Lessee**"), amends and restates that certain Lease/Purchase Agreement, dated as of October 1, 1999, by and between the Lessor and the Lessee (the "**Original Lease**"), which was recorded on October 19, 1999, as Instrument No. 99392184 in the Office of the Recorder of the County of Alameda;

WITNESSETH:

WHEREAS, the Lessee and the Lessor are authorized pursuant to the laws of the State to lease real property which is proper for public purposes; and

WHEREAS, in 1999, the Lessee proposed to acquire and improve with certain capital improvements (as further defined herein, the "**Project**") constituting a 6.4 acre park located within the jurisdiction of the Lessee that is commonly known as Harrison Park, as generally described on Exhibit B hereto ; and

WHEREAS, upon its acquisition of the Project, the Lessee leased the Project to the Lessor pursuant to a Site and Facilities Lease, dated as of October 1, 1999 (the "**Original Site Lease**"); and

WHEREAS, Lessor sub-leased the Project back to the Lessor pursuant to the Original Lease; and

WHEREAS, in order to provide funds to finance the acquisition by the Lessee of the Project, the Lessor issued its Berkeley Joint Powers Financing Authority Lease Revenue Bonds Series 1999 in the aggregate principal amount of \$9,125,000 (the "**1999 Bonds**"), pursuant to a Trust Indenture, dated as of October 1, 1999 (the "**1999 Trust Indenture**"), by and between the Lessor and The Bank of New York Mellon Trust Company, N.A., as trustee; and

WHEREAS, in order to achieve debt service savings for the benefit of the residents of the City, the Lessee is issuing its Berkeley Joint Powers Financing Authority 2012 Refunding Lease Revenue Bonds (1999 and 2003 Refinancing) (the "**Bonds**") for the purpose of refunding the 1999 Bonds; and

WHEREAS, the refunding of the 1999 Bonds with the Bonds will not result in the prepayment of the Lease Payments under the Original Lease, but will allow for the reduction in the amount of the Lease Payments reflected in the Original Lease; and

WHEREAS, the Lessor and the Lessee wish to amend and restate the Original Lease pursuant to this Lease in order to reflect the refunding of the 1999 Bonds and to provide for the substitution of certain real property (the "**Site**") and the improvements thereon, which are

commonly known as the City's Senior Center (together, the "**Leased Property**"), for the Project as the leased property; and

WHEREAS, the Lessor and the Lessee will concurrently amend the Original Site Lease pursuant to a First Amendment to Site and Facilities Lease, dated as of October 1, 2012 (the "**First Amendment to Original Site Lease**"; together with the Original Site Lease, the "**Site Lease**"), to reflect the refunding of the 1999 Bonds and the substitution of the Leased Property for the Project as the property leased thereunder;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the Indenture of Trust, dated as of October 1, 2012 (the "**Trust Indenture**"), by and between the Lessor and The Bank of New York Mellon Trust Company, N.A. (the "**Trustee**"), together with any amendments thereof or supplements thereto permitted to be made thereunder; and the additional terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Lease, refer to this Lease as a whole.

"Applicable Environmental Law" means and shall include, but shall not be limited to, CERCLA, RCRA, the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq., the Clean Air Act, 42 USC § 7401 et seq., HWCL, HSAA, the Porter-Cologne Act, the Air Resources Act, Cal. Health & Safety Code §§ 3900 et seq., the Safe Drinking Water & Toxic Enforcement Act, Cal. Health & Safety Code §§ 25249.5 et seq., and the regulations thereunder, and any other local, State or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (i) the existence, cleanup or remedy of contamination on property;
- (ii) the protection of the environment from spilled, deposited or otherwise emplaced contamination;
- (iii) the control of hazardous wastes; or
- (iv) the use, generation, transport, treatment, removal or recovery of Hazardous Substances, including building materials.

"First Amendment to Original Site Lease" means the First Amendment to Site and Facilities Lease, dated as of October 1, 2012, between Lessor and Lessee.

"Hazardous Substance" means any substance which shall, at any time, be listed as "hazardous" or "toxic" or in the regulations implementing the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 USC §§ 9601 et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 USC §§ 6901 et seq., the California Hazardous Waste Control Law ("**HWCL**"), California Health & Safety Code §§ 25100 et sec., Hazardous Substance Account Act ("**HSAA**"), California Health & Safety Code §§ 25300 et seq., or the Porter-Cologne Water Quality Control Act, (the "**Porter-Cologne Act**"), California Water Code §§ 13000 et seq., or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Law. The term "Hazardous Substance" shall also include, without limitation, raw materials, building components, the products of any manufacturing or other activities on the subject property, wastes, petroleum, and source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC §§ 3011 et sec., as amended).

"Leased Property" means the Site and the improvements thereon, collectively, as such property may be modified or improved from time to time.

"Lessee Representative" means the City Manager, Deputy City Manager or the Director of Finance of the Lessee, or any other person authorized by the City Manager or the City Council of the Lessee to act as Lessee Representative.

"Lessor Representative" means the Chief Administrative Officer, Treasurer or the Treasurer/Auditor of the Authority or any other person authorized by the Chief Administrative Officer or the Governing Board of the Lessor to act as Lessor Representative.

"Original Site Lease" means the Site and Facilities Lease, dated as of October 1, 1999, between the Lessor and the Lessee.

"Permitted Encumbrances" means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the Lessee may, pursuant to provisions of Section 7.7 hereof, permit to remain unpaid; (ii) the Site Lease and this Lease; (iii) any contested right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date (or as of the date of execution of an amendment to this Lease, in the event of an amendment of the Leased Property) and which the Lessee certifies in writing will not materially impair the use of the Leased Property by the Lessee; (v) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Guaranty Company; and (vi) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Lease and to which the Lessor and the Lessee consent in writing.

"Project" means the improvements described in Exhibit B hereto, as amended from time to time.

"Site" means the site described in Exhibit C to this Lease, as amended from time to time.

"Site Lease" means the Original Site Lease as amended by the First Amendment to Original Site Lease.

SECTION 1.2. Exhibits. The following Exhibits are attached to, and by reference made a part of, this Lease:

Exhibit A: Schedule of Lease Payments to be paid by the Lessee to the Lessor, showing the Lease Payment Date and amount of each Lease Payment.

Exhibit B: General Description of the Project.

Exhibit C: Legal Description of the Site.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants to the Lessor as follows:

(a) Due Organization and Existence. The Lessee is a charter city duly organized and existing under its charter and the Constitution of the State.

(b) Authorization; Enforceability. The Constitution and laws of the State, including the charter of the Lessee, authorize the Lessee to enter into the Original Lease, this Lease and the Site Lease , and to enter into the transactions contemplated by and to carry out its obligations under the aforesaid Agreements; the Lessee has duly authorized and executed the aforesaid Agreements. This Lease and the Site Lease constitute the legal, valid, binding and enforceable obligations of the Lessee in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default; No Liens or Encumbrances. Neither the execution and delivery of this Lease or the Site Lease , nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Leased Property except for Permitted Encumbrances and the pledges contained in the Trust Indenture.

(d) Execution and Delivery. The Lessee has duly authorized and executed this Lease and the Site Lease in accordance with the Constitution and laws of the State, including the charter of the City.

(e) Indemnification of Lessor. The Lessee covenants to defend, indemnify and hold harmless the Lessor and its directors, officers and employees (collectively, the "**Indemnified Party**") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Lease, and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Lease. In particular, without limitation, the Lessee shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the Lessee, (ii) any breach or default on the part of the Lessee in the performance of any of its obligations under this Lease, (iii) any act or negligence of the Lessee or of any of its agents, contractors, servants, employees or licensees with

respect to the Leased Property, or (iv) any act or negligence of any assignee or sublessee of the Lessee with respect to the Leased Property. No indemnification is made under this Section or elsewhere in this Lease for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct, negligence, or breach of duty under this Lease by the Lessor, its officers, agents, employees, successors or assigns.

(f) General Tax and Arbitrage Covenant. In order to preserve the tax-exempt nature of interest on the Bonds, Lessee covenants as follows:

(i) *Private Business Use Limitation*. Lessee shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(ii) *Federal Guarantee Prohibition*. Lessee may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(iii) *No Arbitrage*. Lessee may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(iv) *Maintenance of Tax Exemption*. Lessee shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

(v) *Rebate of Excess Investment Earnings to United States*. Lessee shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. Lessee shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by Lessee from any source of legally available funds of Lessee, and shall constitute Additional Rental Payments hereunder.

Lessee shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subparagraph (v). In order to provide for the administration of this subparagraph (v), Lessee may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as Lessee may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by Lessee of any of the requirements under this subparagraph (v).

SECTION 2.2. Representations, Covenants and Warranties of the Lessor. The Lessor represents, covenants and warrants to the Lessee as follows:

(a) Due Organization and Existence; Enforceability. The Lessor is a public entity duly organized, existing under and by virtue of the laws of the State, has the power to enter into this Lease, the Site Lease and the Trust Indenture and to issue the Bonds; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid Agreements and the issuance of the Bonds. This Lease, the Site Lease and the Trust Indenture constitute the legal, valid, binding and enforceable obligations of the Lessor in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(b) No Conflicts or Defaults: No Liens or Encumbrances. Neither the execution and delivery of this Lease, the Site Lease or the Trust Indenture, nor the issuance of the Bonds, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the Joint Exercise of Powers Agreement or Bylaws, if any, of the Lessor or any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Leased Property except by Permitted Encumbrances and by the pledge contained in the Trust Indenture.

(c) Execution and Delivery. The Lessor has duly authorized and executed this Lease, the Site Lease and the Trust Indenture in accordance with the Constitution and laws of the State.

(d) Tax Covenants. Lessor will comply with its covenants in Section 6.07 of the Trust Indenture.

ARTICLE III

DEPOSIT OF BOND PROCEEDS; COMPLETION OF THE PROJECT; FURTHER ASSURANCES

SECTION 3.1. Deposit of Bond Proceeds. On the Closing Date the Lessor agrees to pay or cause to be paid to the Trustee moneys to be deposited with the Trustee as provided in Section 3.02 of the Trust Indenture.

SECTION 3.2. Completion. The Project was acquired and completed.

SECTION 3.3. Further Assurances and Corrective Instruments. The Lessor and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

ARTICLE IV

AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS

SECTION 4.1. Lease. The Lessor hereby leases the Leased Property to the Lessee, and the Lessee hereby leases the Leased Property from the Lessor, upon the terms and conditions set forth herein.

SECTION 4.2. Term. The term of this Lease shall commence on October 20, 1999, and shall end on October 1, 2029, unless extended pursuant to Section 4.3, or unless terminated prior thereto upon the earliest of any of the following events:

(a) Default and Termination. A default by the Lessee and the Lessor's election to terminate this Lease under Section 9.2(b) hereof;

(b) Payment of All Lease Payments. The payment by or on behalf of the Lessee of all lease payments (the "**Lease Payments**") required under Section 4.4 hereof and any additional payments required under Section 4.11 hereof;

(c) Prepayment by Deposit of Security. The deposit of funds or Federal Securities with the Trustee in amounts sufficient to pay all Lease Payments as the same shall become due, as provided by Section 10.1 hereof and as provided by Section 10.01 of the Trust Indenture; or

(d) Prepayment. Upon the exercise by or on behalf of the Lessee of the option to prepay the Lease Payments or any portion thereof as provided in Section 7.3.

SECTION 4.3. Extension of Lease Term. If on October 1, 2029, the Bonds shall not be fully paid, or if the Lease Payments hereunder shall have been abated at any time and for any reason, then the Term shall be extended until all Bonds shall be fully paid, except that the Term shall in no event be extended beyond October 1, 2039.

SECTION 4.4. Lease Payments.

(a) Time and Amount. Subject to the provisions of Section 4.10 (regarding abatement in event of loss of use of any portion of the Leased Property) and Article X (regarding prepayment of Lease Payments), the Lessee agrees to pay to the Lessor, its successors and assigns, as annual rental for the use and possession of the Leased Property, the Lease Payments (denominated into components of principal and interest, the interest components being paid semiannually) in the amounts specified in Exhibit A, to be due and payable in arrears on the third to the last day of the month (or if such day is not a Business Day, the immediately preceding Business Day), if such payment is by check, or the last day of the month (or if such day is not a Business Day, the immediately preceding Business Day), if such payment is by wire transfer, immediately preceding the respective Payment Dates specified in Exhibit A (each a "**Lease Payment Date**").

(b) [Reserved.]

(c) Credits. Any amount held in the Principal Account and Interest Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease

Payments in part but not in whole pursuant to Section 10.2 hereof and other amounts required for payment of past due principal with respect to any Bonds not presented for payment or interest), in excess of an amount equal to the principal and interest due and payable on the Bonds on the next Interest Payment Date less the Lease Payment then due and payable, shall be credited towards the Lease Payment then due and payable. No Lease Payment need be made on any Lease Payment Date if the amounts then held in the Principal Account and Interest Account are at least equal to the Lease Payment then required to be paid.

(d) Rate on Overdue Payments. In the event the Lessee should fail to make any of the Lease Payments required in this Section, the Lease Payment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid, and the Lessee agrees to pay the same with interest thereon, to the extent permitted by law, from the date such amount was originally payable at the rate equal to the highest original interest rate payable on the Bonds.

SECTION 4.5. No Withholding. Notwithstanding any dispute between the Lessor and the Lessee, including a dispute as to the failure of any portion of the Leased Property in use by or possession of the Lessee to perform the task for which it is leased, the Lessee shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

SECTION 4.6. Fair Rental Value. The Lease Payments and Additional Payments shall be paid by the Lessee in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Leased Property during each such period for which said rental is to be paid. The parties hereto have agreed and determined that such total rental represents the fair rental value of the Leased Property. In making such determination, consideration has been given to the obligations of the parties under this Lease (including but not limited to costs of maintenance, taxes and insurance), the value of the Lessor's fee interest in the Site and the improvements thereon, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the Lessee and the general public. In the event that the Lessee and the Trustee, as assignee of the Lessor, agree subsequent to the date hereof that Lease Payments and Additional Payments hereunder are less than the fair rental value of the Leased Property, the Lessee and the Trustee may mutually agree that the Lessee shall increase the Lease Payments and Additional Payments payable hereunder to reflect such fair rental value; provided, however, that the Trustee may rely upon an independent MAI appraisal or other appraisal performed by an independent third party reasonably acceptable to the Lessee.

SECTION 4.7. Budget and Appropriation. The Lessee covenants to take such action as may be necessary to include all Lease Payments (other than the Lease Payments of advance rental) and Additional Payments (to the extent such Additional Payments are known to the Lessee at the time its annual budget is proposed), due hereunder in its annual budget and to make the necessary annual appropriations therefor. During the Term, the Lessee will furnish annually to the Trustee a certificate of the Lessee Representative stating that all Lease Payments and Additional Payments due hereunder for the applicable Fiscal Year have been included in its annual budget and the amount so included. The covenants on the part of the Lessee herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the ministerial duty of each and every public official of the Lessee to take such action and do such things as are required by law in the performance of the official duty of

such officials to enable the Lessee to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the Lessee.

SECTION 4.8. Assignment of Lease Payments. Certain of the Lessor's rights under this Lease, including the right to receive and enforce payment of the Lease Payments to be made by the Lessee hereunder, have been assigned to the Trustee, subject to certain exceptions, pursuant to the Trust Indenture, to which assignment the Lessee hereby consents. The Lessor hereby directs the Lessee, and the Lessee hereby agrees to pay to the Trustee at the Trustee's Office all Lease Payments or prepayments thereof payable by the Lessee hereunder. The Lessor will not assign or pledge the Lease Payments or other amounts derived from the Leased Property and from its other rights under this Lease except as provided under the terms of this Lease, or its duties and obligations except as provided under the Trust Indenture.

SECTION 4.9. Use and Possession. The total Lease Payments due in any Fiscal Year (other than the Lease Payments of advance. rental) shall be for the use and possession of the Leased Property for such Fiscal Year.

SECTION 4.10. Abatement of Lease Payments in Event of Loss of Use. The obligation of the Lessee to pay Lease Payments shall be abated during any period in which by reason of damage, destruction or taking by eminent domain or condemnation with respect to any portion of the Leased Property there is substantial interference with the use and possession of such portion of the Leased Property by the Lessee. The amount of such abatement shall be established by the Lessee, who shall obtain an independent MAI appraisal, which determination shall be such that the resulting Lease Payments represent fair consideration for the use and possession of the portion of the Leased Property not damaged, destroyed or taken. Such abatement shall continue for the period commencing with such damage, destruction or taking and ending with the substantial completion of the replacement or work or repair. Except as provided herein, in the event of any such damage, destruction or taking, this Lease shall continue in full force and effect and the Lessee waives any right to terminate this Lease by virtue of any such damage, destruction or taking. There shall be no abatement of Lease Payments to the extent that moneys derived from any person as a result of any defect or delay in the construction or equipping, as applicable, of any item or portion of the Leased Property, are available to pay the amount which would otherwise be abated. Notwithstanding the foregoing sentence, however, there shall be no abatement if the Bond Fund is available to pay the amount which would otherwise be abated.

SECTION 4.11. Additional Payments. In addition to the Lease Payments, the Lessee shall also pay such amounts ("**Additional Payments**") as shall be required for the payment of all administrative costs of the Lessor relating to the Leased Property or the Bonds, including without limitation all expenses, compensation and indemnification of the Trustee payable by the Lessor under the Trust Indenture, taxes of any sort whatsoever payable by the Lessor as a result of its ownership of the Leased Property or undertaking of the transactions contemplated herein or in the Trust Indenture, fees of auditors, accountants, attorneys or engineers, and all other necessary administrative costs of the Lessor or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Bonds or of the Trust Indenture (including any rebate payments to the federal government pursuant to Section 6.07 of the Trust Indenture) or to indemnify the Lessor and its officers and governing board members.

SECTION 4.12. Net-Net-Net Lease. This Lease shall be deemed and construed to be a "net-net-net lease" and the Lessee hereby agrees that the Lease Payments shall be an absolute

net return to the Lessor, free and clear of any expenses, charges or set-offs whatsoever, except as expressly provided herein.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability.

(a) Coverage. The Lessee shall maintain or cause to be maintained, throughout the Term hereof, a standard comprehensive general liability insurance policy or policies in protection of the Lessee and its officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily injury, death or property damage occasioned by reason of the use or operation of the Leased Property.

(b) Limits. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for bodily injury or death of each person and \$3,000,000 for bodily injury or deaths of two or more persons in each accident or event (subject to a deductible clause of not to exceed \$250,000), and in a minimum amount of \$150,000 for damage to property resulting from each accident or event. Such public liability and property damage liability insurance may, however, be in the form of a single limit policy in the minimum amount of \$4,000,000 covering all such risks.

(c) Joint or Self-Insurance. Subject to the provisions of Section 5.6(d) below, such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the Lessee, and may be maintained in the form of self-insurance by the Lessee.

(d) Payment of Net Proceeds. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.2. Worker's Compensation. The Lessee shall also maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Subject to the provisions of Section 5.6(d) below, such worker's compensation insurance may be maintained in the form of self-insurance by the Lessee.

SECTION 5.3. Casualty and Theft Insurance.

(a) Casualty and Theft Insurance: Coverage. The Lessee shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, insurance against loss or damage to any portion of the Leased Property by fire and lightning, with extended coverage, and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Said insurance shall also cover loss or damage to any portion of the Leased Property

from earthquake; provided that the Lessee shall have no obligation to obtain earthquake insurance if the Lessee certifies to the Trustee annually on or before each October 1 that such insurance is not commercially available at reasonable cost.

(b) Amount. Such insurance shall be in an amount at least equal to the greater of (i) 100% of the replacement cost (without deducting for depreciation) of all structures constituting part of the Leased Property (excluding the cost of excavation, of grading and filling, and of the land) and (ii) the aggregate principal amount of Bonds at the time Outstanding. Other than earthquake insurance, such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Earthquake insurance, if any, may be subject to deductible clauses of not to exceed 10% of such replacement cost for any one loss.

(c) Joint Insurance. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the Lessee.

(d) Payment of Net Proceeds. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Insurance and Condemnation Fund and applied as provided in Section 6.1.

SECTION 5.4. Rental Interruption Insurance.

(a) Coverage and Amount. The Lessee shall maintain or cause to be maintained rental income or use and occupancy insurance in an amount not less than the maximum remaining scheduled Lease Payments in any future 24-month period, to insure against loss of rental income from the Leased Property caused by perils covered by the insurance required to be maintained as provided in Section 5.3 hereof. Such insurance shall be obtained as each portion of such Leased Property becomes subject to this Lease.

(b) Joint Insurance; No Self Insurance. Such insurance may be maintained as part of or in conjunction with any other rental income insurance carried by the Lessee. Rental interruption insurance may not be maintained in the form of self-insurance by the Lessee.

(c) Payment of Net Proceeds. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Bond Fund, to be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

SECTION 5.5. Title Insurance. The Lessee shall maintain or cause to be maintained, throughout the Term of this Lease, title insurance on the Site insuring the Lessee's leasehold estate in the Site, subject only to Permitted Encumbrances, in the form of a CLTA leasehold title policy in an amount equal to the principal amount of the Bonds Outstanding, issued by a company of recognized standing, duly authorized to issue the same, payable to the Trustee for the benefit of the Owners of the Bonds. The Net Proceeds of such insurance shall be applied as provided in Section 6.1(a).

SECTION 5.6. General Insurance Provisions.

(a) Form of Policies. All policies of insurance required to be procured and maintained pursuant to this Lease and any statements of self-insurance shall be in form certified by an insurance agent, broker or consultant to the Lessee to comply with the provisions hereof. A copy of such certification shall be sent to the Trustee. All such policies shall provide that the

Lessee shall give the Trustee 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. Each policy of insurance required to be procured and maintained pursuant to Section 5.3 (regarding casualty and theft insurance), Section 5.4 (regarding rental interruption insurance) and Section 5.5 (regarding title insurance) shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Owners.

(b) Payment of Premiums. The Lessee shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease.

(c) Protection of the Trustee. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

(d) Self-Insurance. The Lessee may elect to self-insure as permitted herein. It may only make such election if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Lessor, the Lessee and the Trustee, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by counties in the State other than the Lessee. If the Lessee elects to provide self-insurance pursuant to this Section, the Lessee shall on the date on which the Lessee elects to self-insure, and annually thereafter, cause to be delivered to the Trustee a certificate of the Risk Manager of the Lessee or an independent actuary or insurance consultant certifying to the adequacy of the Lessee's reserves for such self-insurance.

(e) Evidence of Insurance. The Lessee shall cause to be delivered to the Trustee annually a certificate of the Lessee Representative stating that all the insurance policies required by this Lease are in full force and effect.

SECTION 5.7. Cooperation. The Lessor shall cooperate fully with the Lessee at the expense of the Lessee in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any portion thereof.

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. Application of Net Proceeds.

(a) Deposit in Insurance and Condemnation Fund. Pursuant to Section 5.07 of the Trust Indenture, the Trustee shall deposit Net Proceeds of insurance which it receives in the Insurance and Condemnation Fund as provided in Section 5.3 (regarding casualty and theft insurance) and Section 5.5 (regarding title insurance) promptly upon receipt thereof. The Lessee and/or the Lessor shall transfer to the Trustee any other Net Proceeds received by the Lessee and/or Lessor in the event of any accident, destruction, theft or taking by eminent domain or condemnation with respect to the Leased Property, for deposit in the Insurance and Condemnation Fund.

(b) Disbursement for Replacement or Repair of the Leased Property. Upon receipt of the certification described in paragraph (1) below and the requisition described in paragraph (2) below, the Trustee shall disburse moneys in the Insurance and Condemnation Fund to the person, firm or corporation named in the requisition as provided in Section 5.07 of the Trust Indenture.

(1) Certification. The Lessee Representative must certify to the Lessor and the Trustee that:

(i) Sufficiency of Net Proceeds. The Net Proceeds available for such purpose, together with any other funds supplied by the Lessee for such purpose, are sufficient therefor, and

(ii) Timely Completion. In the event that damage or destruction results in an abatement of Lease Payments, such replacement or repair can be fully completed within a period not in excess of the period in which rental interruption insurance proceeds will be available to pay in full all Lease Payments coming due during such period as described in Section 5.4.

(2) Requisition. The Lessee Representative must state with respect to each payment to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due, (iii) the amount to be paid and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

Any balance of the Net Proceeds remaining after such replacement or repair has been completed and after payment or provision for redemption of all Bonds as provided in Section 5.07 of the Trust Indenture shall be paid to the Lessee.

(c) Disbursement for Prepayment. If the Lessee Representative notifies the Trustee in writing of the Lessee's determination that the certification provided in Section 6.1(b)(1) cannot be made and replacement or repair of any portion of the Leased Property is not economically feasible or in the best interest of the Lessee, then the Trustee shall promptly transfer the Net Proceeds to the Redemption Fund as provided in Section 5.07(b) of the Trust Indenture and apply them to redemption of the Bonds as provided in Section 4.01 of the Trust Indenture and prepayment of Lease Payments as provided in Section 10.2 hereof; provided that in the event of damage or destruction in whole of the Leased Property and in the event such Net Proceeds, together with funds then on hand and available for such purpose in the Bond Fund are not sufficient to redeem all the Bonds then Outstanding, then the Lessee shall not be permitted to certify that repair, replacement or improvement of all of the Leased Property is not economically feasible or in the best interest of the Lessee. In such event, the Lessee shall proceed to repair, replace or improve the Leased Property as described herein from legally available funds in the then current fiscal year and shall make the required notification to the Trustee pursuant to Section 5.07(b) of the Trust Indenture and the Trustee shall disburse moneys in the Insurance and Condemnation Fund to the person, firm, or corporation named in the Requisition as provided therein.

ARTICLE VII

COVENANTS WITH RESPECT TO THE LEASED PROPERTY

SECTION 7.1. Use of the Leased Property. The Lessee represents and warrants that it has an immediate need for, and expects to make immediate use of, all of the Leased Property, which need is not temporary or expected to diminish in the foreseeable future. The Lessee agrees not to give priority in the appropriation of funds for the acquisition or use of any additional equipment or facilities, as the case may be, performing functions similar to that performed by the Leased Property if such priority would adversely affect the interests of the Owners of the Bonds.

SECTION 7.2. Title to the Leased Property.

(a) Lessor Holds Title During Term. During the Term of this Lease, the Lessor does and shall hold title to the Leased Property and any and all additions which comprise remodeling, replacements or modifications. The Lessee shall take any and all actions reasonably required, including but not limited to executing and filing any and all documents reasonably required, to maintain and evidence the Lessor's title to and interest in the Leased Property at all times during the Term of this Lease.

(b) Title Transferred to Lessee at End of Term. Upon expiration of the Term as provided in Section 4.2 hereof (except if such expiration is caused by a default of the Lessee as described in Section 4.2(a)), all right, title and interest of the Lessor in and to all of the Leased Property shall be transferred to and vest in the Lessee without the necessity of any additional document of transfer.

SECTION 7.3. Option to Prepay. The Lessee may exercise an option to prepay the Lease Payments and to purchase the Leased Property or any portion thereof by paying a prepayment price therefor equal to the amounts necessary to cause the termination of the Term for the Leased Property or portion thereof as provided in Section 4.2 hereof.

SECTION 7.4. Quiet Enjoyment. During the Term, the Lessor shall provide the Lessee with quiet use and enjoyment of the Leased Property, and the Lessee shall during such Term peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Lessor, or any person or entity claiming under or through the Lessor except as expressly set forth in this Lease. The Lessor will, at the request of the Lessee, join in any legal action in which the Lessee asserts its right to such possession and enjoyment to the extent the Lessor may lawfully do so. Notwithstanding the foregoing, the Lessor shall have the right to inspect the Leased Property as provided in Section 7.6 hereof.

SECTION 7.5. Installation of Lessee's Personal Property. The Lessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon any portion of the Leased Property. All such items shall remain the sole personal property of the Lessee, regardless of the manner in which the same may be affixed to such portion of the Leased Property, in which neither the Lessor nor the Trustee shall have any interest, and may be modified or removed by the Lessee at any time; provided that the Lessee shall repair and restore any and all damage to such portion of the Leased Property resulting from the installation, modification or removal of any such items of equipment. Nothing in this Lease shall

prevent the Lessee from purchasing items to be installed pursuant to this Section, provided that no lien or security interest shall attach to any part of the Leased Property.

SECTION 7.6. Access to the Leased Property. The Lessee agrees that the Lessor, any Lessor Representative and the Lessor's successors, assigns or designees shall have the right at all reasonable times to enter upon the Leased Property or any portion thereof to examine and inspect the Leased Property. The Lessee further agrees that the Lessor, any such Representative, and the Lessor's successors, assigns or designees shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the Lessee to perform its obligations hereunder.

SECTION 7.7. Maintenance, Utilities, Taxes and Assessments.

(a) Maintenance: Repair and Replacement. Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all repair and maintenance of the Leased Property shall be the responsibility of the Lessee, and the Lessee shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the Lessee or any sublessee thereof. In exchange for the Lease Payments herein provided, the Lessor agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The Lessee waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the Lessee under the terms of this Lease.

(b) Tax and Assessments; Utility Charges. The Lessee shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges of any type or nature charged to the Lessor or the Lessee or levied, assessed or charged against any portion of the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

(c) Contests. The Lessee may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided that prior to such nonpayment it shall furnish the Lessor and the Trustee with the Opinion of Counsel, to the effect that, by nonpayment of any such items, the interest of the Lessor in such portion of the Leased Property will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. Otherwise, the Lessee shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Lessor. The Lessor will cooperate fully in such contest, upon the request and at the expense of the Lessee.

SECTION 7.8. Modification of the Leased Property.

(a) Additions, Modifications and Improvements. The Lessee shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Leased Property if such improvements are necessary or beneficial for the use of such portion of the Leased Property. All such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the

Leased Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would impair the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and the Leased Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Leased Property immediately prior to the making of such additions, modifications and improvements.

(b) No Liens. Except for Permitted Encumbrances, the Lessee will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Lessee pursuant to this Section; provided that if any such lien is established and the Lessee shall first notify or cause to be notified the Lessor of the Lessee's intention to do so, the Lessee may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Lessor with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Trustee as assignee of the Lessor. The Lessor will cooperate fully in any such contest, upon the request and at the expense of the Lessee.

SECTION 7.9. Encumbrances; Alternative Financing Methods.

(a) Encumbrances. Except as provided in this Article VII (including without limitation Section 7.8 hereof and this Section 7.9), the Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, liens, charges, encumbrances or claims, as applicable, on or with respect to the Leased Property, other than Permitted Encumbrances and other than the respective rights of the Lessor and the Lessee as herein provided. Except as expressly provided in this Article VII, the Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time; provided that the Lessee may contest such liens if it desires to do so. The Lessee shall reimburse the Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, change, encumbrance or claim.

(b) Alternative Financing Methods: Notwithstanding the foregoing, the Lessee may create or suffer to create any mortgage, pledge, liens, charges, encumbrances or claims upon the Leased Property or any improvements thereto, provided that (1) any such mortgage, pledge, liens, charges, encumbrances or claims shall at any time while any of the Bonds remain Outstanding be and remain subordinate in all respects to the Lease and any security interest given to the Trustee for the benefit of the Owners and (2) the Lessee shall have first delivered to the Trustee an opinion of Bond Counsel substantially to the effect that such mortgage, pledge, liens, charges, encumbrances or claims would not result in the inclusion of the interest on the Bonds in the gross income of the owners of the Bonds for purposes of federal income taxation or impair the State tax-exempt status of such payments.

SECTION 7.10. Lessor's Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE LESSEE OF THE LEASED PROPERTY OR ANY PORTION THEREOF. THE LESSEE ACKNOWLEDGES THAT THE LESSOR IS NOT A MANUFACTURER OF PORTIONS OF THE LEASED PROPERTY,

AND THAT THE LESSEE IS LEASING THE LEASED PROPERTY AS IS. In no event shall the Lessor or its assigns be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease, the Acquisition Agreement or the Trust Indenture for the existence, furnishing, functioning or Lessee's use and possession of the Leased Property.

SECTION 7.11. [Reserved.]

SECTION 7.12. Environmental Matters.

(a) The Lessee will comply with Applicable Environmental Law and shall not use, store, generate, treat, transport or dispose of any Hazardous Substance on, or in a manner that would cause it to later flow, migrate, leak, leach or otherwise come to rest on or in the Leased Property.

(b) The Lessee will transmit copies of all records concerning the contact with any local, State or federal agency concerning any violation of any Applicable Environmental Law involving the Leased Property, and all notices, orders or statements received from any governmental entity concerning violations of Applicable Environmental Law with respect to the Leased Property and any operations conducted thereon or any conditions existing thereon to the Trustee. The Lessee shall notify the Trustee in writing immediately of any release, discharge, spill or deposit of any Hazardous Substance that has occurred or is occurring which in any way affects or threatens to affect the Leased Property, or the people, structures, equipment or other property thereon.

(c) The Lessee shall permit the Lessor, its agents or any experts designated by the Lessor to have full access to the Leased Property during reasonable business hours for purposes of such independent investigation of compliance with Applicable Environmental Law.

SECTION 7.13. [Reserved.]

SECTION 7.14. [Reserved.]

SECTION 7.15. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Lease and the Indenture, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee may (and, at the request of the Original Purchaser or the Owner of at least 25% aggregate principal amount of Outstanding Bonds, shall) or any Owner of Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this paragraph. For purposes of this paragraph, "Beneficial Owner" means any person which (a) has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

ARTICLE VIII

ASSIGNMENT, SUBLEASING, SUBSTITUTION, RELEASE AND AMENDMENT

SECTION 8.1. Assignment by the Lessor. Except as provided herein and in the Trust Indenture, the Lessor will not assign this Lease to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in Section 2.2 hereof.

SECTION 8.2. Assignment and Subleasing by the Lessee.

(a) Assignment. This Lease may be assigned by the Lessee so long as such assignment does not, in the opinion of Bond Counsel, adversely affect the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest on the Bonds. In the event that this Lease is assigned by the Lessee, the obligation to make Lease Payments hereunder shall remain the obligation of the Lessee.

(b) Sublease. The Lessee may sublease all or any portion of the Leased Property, with the consent of the Trustee as assignee of the Lessor, subject to all of the following conditions:

(i) This Lease and the obligation of the Lessee to make Lease Payments hereunder shall remain obligations of the Lessee;

(ii) The Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Lessor and the Trustee a true and complete copy of such sublease;

(iii) No sublease by the Lessee shall cause the Leased Property to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the laws of the State; and

(iv) No sublease shall affect the validity of this Lease or, in the opinion of Bond Counsel addressed to the Lessee, the Lessor and the Trustee, shall cause the interest on the Bonds to become subject to federal income taxes or State personal income taxes.

SECTION 8.3. Amendments and Modifications. Subject to the conditions set forth in this Section 8.3, this Lease may be amended or any of its terms modified with the written consent of the Lessee and the Trustee as assignee of the Lessor. Without the written consent of the Trustee, the Lessee will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Lease, excepting only as such alteration or modification may be permitted by Section 9.05 of the Trust Indenture.

SECTION 8.4. Substitution of Property. The City has the option at any time and from time to time, to substitute other real property (the "**Substitute Property**") for the Leased Property or any portion thereof (the "**Former Property**"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(a) No Event of Default has occurred and is continuing.

- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment hereof which adds the legal description of the Substitute Property to Exhibit C and deletes therefrom the legal description of the Former Property.
- (c) The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- (g) The City has filed with the Authority and the Trustee a written certificate of the City or other written stating that the useful life of the Substitute Property at least extends to October 1, 2029, and that the fair rental value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (h) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease and the Assignment Agreement.

SECTION 8.5. Release of Property. The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease (the "**Released Property**") provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient

memorialization of, an amendment hereof which removes the Released Property from the Site Lease and this Lease.

- (c) The City has certified in writing to the Authority and the Trustee that the fair rental value of the property which remains subject to this Lease following such release is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (d) The City has mailed written notice of such release to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Released Property.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be "**events of default**" under this Lease and the terms "**events of default**" and "**default**" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the Lessee to pay any Lease Payment required to be paid hereunder by the next succeeding Payment Date following each corresponding Lease Payment Date; provided, however, that such failure shall not constitute an event of default if the amounts so unpaid have been transferred from a special fund source to the Principal Account and Interest Account to make such Lease Payments pursuant to the terms of the Trust Indenture

(b) Covenant Default. Failure by the Lessee to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, including failure to make any Additional Payment, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Lessor, the Trustee or the Owners of not less than a majority in aggregate principal amount of Bonds then Outstanding; provided, however, if in the reasonable opinion of the Lessee the failure stated in the notice cannot be corrected within the applicable period, the Trustee, as assignee of the Lessor, or such Owners, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the Lessee of a case in bankruptcy, or the subjection of any right or interest of the Lessee under this Lease to any execution, garnishment or attachment, or adjudication of the Lessee as a bankrupt,

or assignment by the Lessee for the benefit of creditors, or the entry by the Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

SECTION 9.2. Remedies on Default. Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Lessor to exercise any and all remedies available pursuant to law or granted pursuant to this Lease; provided however, there shall be no right to repossess and re-lease the Property and/or terminate this Lease. Notwithstanding anything herein or in the Trust Indenture to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE LEASE PAYMENTS OR OTHERWISE DECLARE ANY LEASE PAYMENTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE AND PAYABLE.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be, deemed to waive any other breach hereunder.

SECTION 9.6. Application of the Proceeds from the Re-Lease of the Leased Property. All amounts received by the Lessor under this Article IX (other than as provided in Section 9.2(b) herein regarding certain surplus) shall be deposited by the Trustee in the Bond Fund and credited towards the Lease Payments in inverse order of Lease Payment Dates.

SECTION 9.7. Trustee and Owners to Exercise Rights. Such rights and remedies as are given to the Lessor under this Article IX have been assigned by the Lessor to the Trustee under the Trust Indenture, to which assignment the Lessee hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners as provided in the Trust Indenture.

ARTICLE X

PREPAYMENT OF LEASE PAYMENTS

SECTION 10.1. Security Deposit. Notwithstanding any other provision of this Lease, the Lessee may, on any date, secure the payment of Lease Payments by a deposit by it with the Trustee of cash and/or Federal Securities as provided in Section 10.01 of the Trust Indenture. In such event, all obligations of the Lessee under this Lease, and all security provided by this Lease for said obligations, shall cease and terminate, excepting only the obligation of the Lessee to make, or cause to be made, Lease Payments from such deposit. On the date of said deposit title to the Leased Property shall vest in the Lessee, automatically and without further action by the Lessee or the Lessor (except as provided herein); provided that title shall be subject to the subsequent payment of Lease Payments made from said deposit in accordance with the provisions hereof. Said deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 10.2. Mandatory Prepayment From Net Proceeds. The Lessee shall be obligated to prepay the Lease Payments in whole or in part on any date, from and to the extent of any Net Proceeds theretofore deposited in the Redemption Fund pursuant to Section 5.07 of the Trust Indenture. The Lessee and the Lessor hereby agree that such Net Proceeds shall be credited towards the Lessee's obligations hereunder (except in the case of such prepayment of the Lease Payments in whole) in in the order specified by the Lessee.

SECTION 10.3. Optional Prepayment. Subject to the terms and conditions of this Section, the Lessor hereby grants an option to the Lessee to prepay in whole or in part, the principal amount of Lease Payments relating to Bonds maturing in the years specified in Section 4.01(a) of the Trust Indenture, on the dates and at the redemption prices provided therein. The Lessee shall execute said option by giving written notice to the Trustee thereof at least 45 days' prior to the date of redemption and depositing with said notice (1) accrued interest on the principal amount to be prepaid to the date of redemption, plus (2) any Lease Payments then due but unpaid, plus (3) the redemption premium described in said Section 4.01(a); provided that no such prepayment shall occur in an amount of less than \$20,000 plus any premium applicable.

SECTION 10.4. Sinking Fund Redemption. The Lessee and Lessor acknowledge that the Bonds are subject to mandatory redemption from Lease Payments on the dates, at the terms and in the amounts provided in Section 4.01(c) of the Trust Indenture.

SECTION 10.5. Credit for Amounts on Deposit. In the event of prepayment of the Lease Payments in full under this Article X such that the Trust Indenture shall be discharged by its terms as a result of such prepayment, all amounts then on deposit in the Bond Fund shall be credited toward the amounts then required to be so prepaid.

SECTION 10.6. Effect of Prepayment.

(a) In Whole. In the event that the Lessee prepays all remaining Lease Payments either by making a security deposit with the Trustee as provided in Section 10.1 hereof or from Net Proceeds as provided in Section 10.2 hereof or from cash or other legally available moneys deposited by the Lessee as provided in Section 10.3, the Lessee's obligations under this Lease shall thereupon cease and terminate, including but not limited to the Lessee's obligation to continue to pay Lease Payments under this Article X.

(b) In Part. In the event the Lessee prepays less than all of the remaining principal components of the Lease Payments pursuant to Section 10.2 hereof (from Net Proceeds) or Section 10.3 hereof (from cash or other legally available moneys deposited by the Lessee), the amount of such prepayment shall be applied to reduce the principal components of the remaining Lease Payments corresponding to the resulting redemption of principal of the Bonds.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five Business Days after deposit in the United States mail in certified form, postage prepaid, to the Lessee or the Lessor, as the case may be, at the following addresses:

If to the Lessee:

City of Berkeley
2180 Milvia St.
Berkeley, CA 94704
Attention: Director of Finance

If to the Lessor:

Berkeley Joint Powers Financing Authority c/o City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: Treasurer

If to the Trustee:

700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Department

The Lessor, the Lessee and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns.

SECTION 11.3. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 11.6. Effect on Original Lease. The Original Lease is hereby amended and restated and superceded in its entirety, and the Original Lease shall be of no further force or effect.

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IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in its name by its duly authorized officers, and the Lessee has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

BERKELEY JOINT POWERS FINANCING
AUTHORITY, as Lessor

By _____

Treasurer

CITY OF BERKELEY, as Lessee

By _____

City Manager

**ACKNOWLEDGED AND
CONSENTED TO:**

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as trustee

Authorized Officer

EXHIBIT A

SCHEDULE OF LEASE PAYMENTS

Bond Payment Date⁽¹⁾	Principal Component	Interest Component	Total Principal and Interest Component
--	--------------------------------	-------------------------------	---

(1) Lease Payments due on fifteenth day of prior month.

EXHIBIT B

GENERAL DESCRIPTION OF THE PROJECT

The Project consists of the acquisition and improvement of a 6.4 acre park located at 4th and Harrison Streets in Berkeley.

EXHIBIT C

LEGAL DESCRIPTION OF THE SITE

\$ _____*

**BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)**

BOND PURCHASE AGREEMENT

October __, 2012

Berkeley Joint Powers Financing Authority
2180 Milvia Street
Berkeley, California 94704

City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

Ladies and Gentlemen:

_____ (the “**Underwriter**”) offers to enter into this Bond Purchase Agreement (this “**Purchase Contract**”) with the Berkeley Joint Powers Financing Authority (the “**Authority**”) and the City of Berkeley (the “**City**”). This offer is made subject to the Authority’s and the City’s acceptance by execution of this Purchase Contract and delivery of the same to the Underwriter on or before 11:59 p.m. on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the Authority and the City at any time prior to such acceptance. Upon the Authority’s and the City’s acceptance hereof, the Purchase Contract will be binding upon the Authority, the City and the Underwriter.

The Authority and the City acknowledge and agree that: (i) the purchase and sale of the Bonds (defined below) pursuant to this Purchase Contract is an arm’s-length commercial transaction between the Authority and the City and the Underwriter; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as a “municipal advisor” (as defined in section 15B of the Securities Exchange Act of 1934, as amended); (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the Authority or the City with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Authority or the City on other matters); (iv) the Underwriter has financial and other interests that differ from those of the City and the Authority; and (v) the Authority and the City have consulted their own legal, financial and other advisors to the extent they have deemed appropriate with respect to this transaction.

* Preliminary, subject to change.

Capitalized terms used in this Purchase Contract and not otherwise defined herein shall have the respective meanings set forth for such terms in the Indenture (defined below).

Section 1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations set forth in this Purchase Contract, the Underwriter agrees to purchase from the Authority, and the Authority agrees to sell and deliver to the Underwriter, all (but not less than all) of the bonds captioned above (the “**Bonds**”) at a purchase price of \$_____ (being an amount equal to the principal amount of the Bonds (\$_____), *plus/less* a net original issue premium/discount of \$_____, and *less* an underwriter’s discount of \$_____). The obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds shall be conditioned on the sale and delivery of all of the Bonds by the Authority to the Underwriter at Closing (hereafter defined).

Section 2. Bond Terms; Authorizing Instruments; Purpose. (a) The Bonds shall be dated their date of delivery and shall mature and bear interest as shown on Exhibit A. The Bonds shall be as described in, and shall be issued and secured under, an Indenture, dated as of October 1, 2012 (the “**Indenture**”), between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**Trustee**”). The Bonds are payable and subject to redemption as shown in Exhibit A.

(b) The Bonds will be issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985, commencing with Section 6584 of the California Government Code, and are payable from and secured by the Authority’s pledge of “Revenues” (as such are defined in the Indenture), which consist primarily of “**Lease Payments**” under and as defined in the Indenture, which will be made by the City pursuant to the following lease agreements, each dated as of October 1, 2012, between the City and the Authority (collectively, the “**Lease Agreements**”):

(i) Amended and Restated Lease Agreement (Theater) (the “**Theater Lease**”), pursuant to which the Authority leases a community theater to the City (the “**Theater**”).

(ii) Amended and Restated Lease/Purchase Agreement (the “**Senior Center Lease**”), pursuant to which the Authority leases a senior center and related improvements to the City (the “**Senior Center**”).

(iii) Amended and Restated Lease Agreement (Office Building) (the “**Office Lease**”), pursuant to which the Authority leases an office building to the City (the “**Office Building**”).

(c) The City and the Authority are also entering into an amended Site Lease with respect to each of the Senior Center Lease and the Office Lease, and each dated as of October 1, 2012 (the “**Site Lease Amendments**”). Under the Site Lease Amendments, the City (as owner of the Site) leases the real property described therein to the Authority and, under the Lease Agreement, the Authority leases the same real property back to the City.

The Authority will assign to the Trustee its right to receive the Lease Payments pursuant to three separate Assignment Agreements, each dated as of October 1, 2012 (the “**Assignment Agreements**”).

(d) The Authority is issuing the Bonds to provide funds to refinance three outstanding lease obligations of the City (collectively, the “**Original Leases**”):

(i) Lease Agreement, dated as of October 1, 1999 (the “**Original Theater Lease**”), pursuant to which the Authority presently leases the Theater,

(ii) Lease/Purchase Agreement, dated as of October 1, 1999 (the “**Original Park Lease**”), under which the City had leased a public park (the “**Park**”), and which will be amended and restated pursuant to the Senior Center Lease to provide for the Authority’s lease of the Senior Center, and

(iii) Lease Agreement, dated as of February 1, 2003 (the “**Original Office Lease**”), pursuant to which the Authority leases the Office Building.

As a result of the refinancing of the Original Theater Lease and the Original Park Lease, the Authority will concurrently defease and provide for redemption of the Authority’s outstanding \$9,125,000 Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 1999 (the “**1999 Bonds**”), which the Authority issued pursuant to a Trust Indenture, dated as of October 1, 1999 (the “**1999 Trust Indenture**”), by and among the Authority, the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**1999 Trustee**”). As a result of the refinancing of the Original Office Lease, the City will concurrently defease and provide for prepayment of its outstanding \$27,950,000 2003 Certificates of Participation (Building Acquisition and Improvement Projects) (the “**2003 Certificates**”), which were executed and delivered pursuant to a Trust Agreement, dated as of February 1, 2003 (the “**2003 Trust Agreement**”), among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**2003 Trustee**”). In connection with the issuance of the Bonds, the Authority, the City, the 1999 Trustee and the 2003 Trustee will enter into an Escrow Deposit and Trust Agreement, dated as of October 1, 2012 (the “**Escrow Agreement**”), by and among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “**Escrow Agent**”).

(e) The City and the Berkeley Redevelopment Agency (the “**Agency**”) have previously entered into a Joint Exercise of Powers Agreement dated as of January 11, 1994 (the “**Original JPA Agreement**”) creating the Authority. The City, the Berkeley Redevelopment Successor Agency (the “**Successor Agency**”), as successor agency to the Agency, and the California Municipal Finance Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California (“**CMFA**”) shall enter into an Amended and Restated Joint Exercise of Powers Agreement, dated as of October 2, 2012 (the “**Amended JPA Agreement**”), in order to ensure the continuation of the Authority and to provide for the withdrawal of the Successor Agency. Each of the City, the Successor Agency and CFMA shall approve the Amended JPA Agreement by adoption of a resolution of the governing body of each such entity (each, an “**Amended JPA Agreement Resolution**”) dated as of or prior to the execution date of the Amended JPA Agreement. The Authority Commission (the “**Commission**”) of the Authority shall concurrently cause the Bylaws of the Authority to be correspondingly amended and restated, by adoption of a resolution on October 2, 2012 (the “**Authority Bylaws Resolution**”).

Section 3. Public Offering. The Underwriter agrees to make an initial bona fide public offering of all of the Bonds, at not in excess of the initial public offering yields or prices set forth on Exhibit A. Following the initial public offering of the Bonds, the offering prices may be changed from time to time by the Underwriter.

Section 4. Official Statement; Continuing Disclosure. (a) The Authority and the City have delivered to the Underwriter the Preliminary Official Statement dated October __, 2012 (the "**Preliminary Official Statement**") and will deliver to the Underwriter a final official statement dated the date of this Purchase Contract (as amended and supplemented from time to time pursuant to Section 5(i) of this Purchase Contract, the "**Official Statement**"). Subsequent to its receipt of the Authority's and the City's 15c2-12 Certificate, in substantially the form attached hereto as Exhibit B, deeming the Preliminary Official Statement final for purposes of Rule 15c2-12 of the Securities and Exchange Commission ("**Rule 15c2-12**"), the Underwriter has distributed copies of the Preliminary Official Statement. The Authority and the City hereby ratify the use by the Underwriter of the Preliminary ` and authorizes the Underwriter to use and distribute in printed and/or electronic format the Official Statement (including all information previously permitted to have been omitted by Rule 15c2-12, and any supplements and amendments thereto as have been approved by the Authority and the City as evidenced by the execution and delivery of such document by an officer of the Authority and the City), the Indenture, the Site Lease Amendments, the Escrow Agreement, the Assignment Agreements, the Lease Agreements, this Purchase Contract, the Continuing Disclosure Certificate (hereinafter defined) and all information contained therein, and all other documents, certificates and written statements furnished by the Authority and the City to the Underwriter in connection with the transactions contemplated by this Purchase Contract, in connection with the offer and sale of the Bonds by the Underwriter.

The Underwriter hereby agrees to deliver a copy of the Official Statement to the Municipal Securities Rulemaking Board (the "**MSRB**") through the Electronic Municipal Marketplace Access website of the MSRB on or before the Closing Date and otherwise to comply with all applicable statutes and regulations in connection with the offering and sale of the Bonds, including, without limitation, MSRB Rule G-32 and Rule 15c2-12. The Authority and the City agree to deliver to the Underwriter as many copies of the Official Statement as the Underwriter shall reasonably request as necessary to comply with paragraph (b)(4) of Rule 15c2-12. The Authority and the City agree to deliver the final Official Statement within seven business days after the execution hereof, or such earlier date identified by the Underwriter to be necessary to allow the Underwriter to meet its obligations under the Rule and Rule G-32 of the MSRB.

(b) The Underwriter agrees to: (1) provide the Authority with final pricing information on the Bonds on a timely basis prior to the Closing and (2) take any and all other actions necessary to comply with applicable Securities and Exchange Commission rules and MSRB rules governing the offering, sale and delivery of the Bonds to ultimate purchasers.

(c) In connection with issuance of the Bonds, and in order to assist the Underwriter with complying with the provisions of Rule 15c2-12, the City, on behalf of itself and the Authority, will execute a continuing disclosure certificate countersigned by the Trustee, as dissemination agent (the "**Continuing Disclosure Certificate**"), under which the City will undertake to provide certain financial and operating data as required by Rule 15c2-12. The form of the Continuing Disclosure Certificate is attached as an appendix to the Preliminary Official Statement and will be attached as an appendix to the final Official Statement.

Section 5. Representations, Warranties and Covenants of the Authority. The Authority hereby represents, warrants and agrees with the Underwriter that:

(a) The Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "**State**") and has all necessary power and authority

to adopt the Authority Resolution, the Authority's Amended JPA Agreement Resolution, and the Authority Bylaws Resolution, to enter into and perform its duties under the Indenture, the Assignment Agreements, the Lease Agreements, the Site Lease Amendments, the Escrow Agreement, the Amended JPA Agreement and this Purchase Contract (the "**Authority Agreements**") and, when executed and delivered by the respective parties thereto, the Authority Agreements will each constitute legal, valid and binding obligation of the Authority enforceable in accordance with its respective terms.

(b) The Authority Commission has taken official action by the Authority's Amended JPA Agreement Resolution and the Authority Bylaws Resolution, each adopted on October 2, 2012, and by a resolution adopted on October __, 2012 (the "**Authority Resolution**"), each adopted by a majority of the members of the Commission at a regular meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the Authority Agreements and the Official Statement and the taking of any and all such action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated hereby.

(c) By all necessary official action, the Authority has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the Bonds and the Authority Agreements, and the consummation by it of all other transactions contemplated by the Authority Resolution, the Authority's Amended JPA Agreement Resolution, the Authority Bylaws Resolution, the Authority Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered by their respective parties, the Authority Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the Authority, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the Authority's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement under the heading "THE AUTHORITY" do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) As of the date hereof, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against the Authority or, to the best knowledge of the Authority, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the Authority, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of Authority Agreements or the Bonds, or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, or any other agreement or instrument to which the Authority is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the Authority

required for the execution and delivery of this Purchase Contract or the consummation by the Authority of the other transactions contemplated by the Official Statement or the Authority Agreements.

(g) Any certificate signed by any official of the Authority authorized to do so shall be deemed a representation and warranty by the Authority to the Underwriter as to the statements made therein.

(h) Except as previously disclosed to the Underwriter, the Authority is not in default, and at no time has the Authority defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i)

(1) If between the date of this Purchase Contract and the date which is 25 days following the End of the Underwriting Period (as defined below), any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Authority shall immediately notify the Underwriter, and if, in the opinion of the Underwriter, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will at its expense supplement or amend the Official Statement in a form and in a manner approved by the Underwriter. “**End of the Underwriting Period**” shall mean the later of: (i) the Closing Date, and (ii) the date the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public, provided that unless the Underwriter notifies the Authority on or prior to the Closing Date that it retains, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public, the End of the Underwriting Period shall be deemed to have occurred on the Closing Date.

(2) After the Closing, the Authority will not participate in the issuance of any amendment of or supplement to the Official Statement to which, after being furnished with a copy, the Underwriter reasonably objects in writing or which is disapproved by Underwriter’s Counsel (hereinafter defined). If any event relating to or affecting the Authority occurs as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, the Authority will use its best efforts to assist the Underwriter in preparing (at the expense of the Authority for 90 days after the date of the Closing, and thereafter at the expense of the Underwriter) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading. For the purposes of this subsection, the Authority will furnish such information with respect to itself as the Underwriter may from time to time reasonably request.

(j) Except as disclosed in the Official Statement, the Authority has not previously failed to comply in all material respects with any undertakings under Rule 15c2-12 during the past five years.

Section 6. Representations, Warranties and Covenants of the City. The City hereby represents, warrants and agrees with the Underwriter that:

(a) The City is a charter city and municipal corporation, organized and existing under the laws of the State of California (the "**State**") and has all necessary power and authority to adopt the City's Amended JPA Agreement Resolution and its resolution adopted on October __, 2012 (the "**City Resolution**"), to enter into and perform its duties under the Site Lease Amendments, the Lease Agreements, the Continuing Disclosure Certificate, the Escrow Agreement, the Amended JPA Agreement and this Purchase Contract (the "**City Agreements**") and, when executed and delivered by the respective parties thereto, the City Agreements will each constitute legal, valid and binding obligation of the City enforceable in accordance with its respective terms.

(b) The city council (the "**City Council**") of the City has taken official action by adopting the City Resolution and the City's Amended JPA Agreement Resolution, each by a majority of the members of the City Council, at meetings duly called, noticed and conducted, at which a quorum was present and acting throughout, authorizing the execution, delivery and due performance of the City Agreements and the Official Statement and the taking of any and all such action as may be required on the part of the City to carry out, give effect to and consummate the transactions contemplated hereby.

(c) By all necessary official action, the City has duly adopted each of the City Resolution and the City's Amended JPA Agreement Resolution, has duly authorized the preparation and delivery of the Preliminary Official Statement and the preparation, execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, the City Agreements, and the consummation by it of all other transactions contemplated by the City Resolution, the City's Amended JPA Agreement Resolution, the City Agreements, the Preliminary Official Statement and the Official Statement. When executed and delivered by their respective parties, the City Agreements (assuming due authorization, execution and delivery by and enforceability against the other parties thereto) will be in full force and effect and each will constitute legal, valid and binding agreements or obligations of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(d) At the time of the City's acceptance hereof and at all times subsequent thereto up to and including the time of the Closing, the information and statements in the Official Statement (other than any information concerning the Depository Trust Company and the book-entry system for the Bonds or provided by the Underwriter) do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) As of the date hereof, there is no action, suit, proceeding or investigation before or by any court, public board or body pending against the City or, to the best knowledge of the

City, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of the City, or the titles of its members or officers; (ii) in any way question or affect the validity or enforceability of City Agreements or the Bonds, or (iii) in any way question or affect the Purchase Contract or the transactions contemplated by the Purchase Contract, the Official Statement, or any other agreement or instrument to which the City is a party relating to the Bonds.

(f) There is no consent, approval, authorization or other order of, or filing or registration with, or certification by, any regulatory authority having jurisdiction over the City required for the execution and delivery of this Purchase Contract or the consummation by the City of the other transactions contemplated by the Official Statement or the City Agreements.

(g) Any certificate signed by any official of the City authorized to do so shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein.

(h) Except as previously disclosed to the Underwriter, the City is not in default, and at no time has the City defaulted in any material respect, on any bond, note or other obligation for borrowed money or any agreement under which any such obligation is or was outstanding.

(i)

(1) Except as disclosed in the Official Statement or otherwise disclosed in writing to the Underwriter, there has not been any materially adverse change in the financial condition of the City since June 30, 2011, and there has been no occurrence or circumstance or combination thereof that is reasonably expected to result in any such materially adverse change.

(2) If between the date of this Purchase Contract and the date which is 25 days following the End of the Underwriting Period (as defined below), any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall immediately notify the Underwriter, and if, in the opinion of the Underwriter, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will at its expense supplement or amend the Official Statement in a form and in a manner approved by the Underwriter. "End of the Underwriting Period" shall mean the later of: (i) the Closing Date, and (ii) the date the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public, provided that unless the Underwriter notifies the City on or prior to the Closing Date that it retains, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public, the End of the Underwriting Period shall be deemed to have occurred on the Closing Date.

(3) After the Closing, the City will not participate in the issuance of any amendment of or supplement to the Official Statement to which, after being furnished with a copy, the Underwriter reasonably objects in writing or which is disapproved by Underwriter's Counsel. If any event relating to or affecting the City occurs as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in the light of

the circumstances existing at the time it is delivered to a purchaser, the City will use its best efforts to assist the Underwriter in preparing (at the expense of the City for 90 days after the date of the Closing, and thereafter at the expense of the Underwriter) a reasonable number of copies of an amendment or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading. For the purposes of this subsection, the City will furnish such information with respect to itself as the Underwriter may from time to time reasonably request.

(j) Except as disclosed in the Official Statement, the City has not previously failed to comply in all material respects with any undertakings under Rule 15c2-12 in the past five years.

(k) The City does not need the consent of its auditor to include its audited financial statements for the fiscal year ended June 30, 2011 as an appendix to the Official Statement.

(l) The City will comply with the defeasance and redemption provisions of (i) the 1999 Trust Indenture and the security deposit and prepayment provisions of the Original Theater Lease and the Original Park Lease in connection with the refinancing of the 1999 Bonds and (ii) the 2003 Trust Agreement and the security deposit and prepayment provisions of the Original Office Lease in connection with the refinancing of the 2003 Certificates.

Section 7. The Closing. (a) At 8:00 A.M., San Francisco time, on October __, 2012, or on such earlier or later time or date as may be agreed upon by the Underwriter, the Authority and the City (the "**Closing**"), the Authority shall deliver the Bonds to the Underwriter, through the book-entry system of The Depository Trust Company ("**DTC**"). Prior to the Closing, the Authority and the City shall deliver, at the offices of Jones Hall, A Professional Law Corporation ("**Bond Counsel**") in San Francisco, California, or such other place as are mutually agreed upon by the Underwriter and the Authority, the other documents described in this Purchase Contract. On the date of the Closing, the Underwriter shall pay the purchase price of the Bonds as set forth in Section 1 of this Purchase Contract in immediately available funds to the order of the Trustee.

(b) The Bonds shall be issued in fully registered form and shall be prepared and delivered as one Bond for each maturity registered in the name of a nominee of DTC. It is anticipated that CUSIP identification numbers will be inserted on the Bonds, but neither the failure to provide such numbers nor any error with respect thereto shall constitute a cause for failure or refusal by the Underwriter to accept delivery of the Bonds in accordance with the terms of this Purchase Contract.

Section 8. Conditions to Underwriter's Obligations. The Underwriter has entered into this Purchase Contract in reliance upon the representations and warranties of the Authority and the City contained herein and to be contained in the documents and instruments to be delivered on the date of the Closing, and upon the performance by the Authority and the City of their respective obligations to be performed hereunder and under such documents and instruments to be delivered at or prior to the date of the Closing. The Underwriter's obligations under this Purchase Contract are and shall also be subject to the sale, issuance and delivery of the Bonds as well as the following conditions:

(a) The representations and warranties of the Authority and the City contained in this Agreement shall be true and correct in all material respects on the date of this Purchase Contract and on and as of the date of the Closing as if made on the date of the Closing;

(b) As of the date of the Closing, the Official Statement may not have been amended, modified or supplemented, except in any case as may have been agreed to by the Underwriter;

(c) (i) As of the date of the Closing, the Authority Resolution, the City Resolution, each Amended JPA Agreement Resolution, the Authority Agreements and the City Agreements shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by the Underwriter, (ii) the Authority shall perform or have performed all of its obligations required under or specified in the Authority Resolution, the Authority's Amended JPA Agreement Resolution, the Authority Agreements and this Purchase Contract to be performed at or prior to the date of the Closing; and (iii) the City shall perform or have performed all of its obligations required under or specified in the City Resolution, the City's Amended JPA Agreement Resolution, the City Agreements and this Purchase Contract to be performed at or prior to the date of the Closing;

(d) As of the date of the Closing, all necessary official action of the Authority relating to the Authority Agreements, the Authority Resolution, the Authority's Amended JPA Agreement Resolution and the Official Statement, and all necessary official action of the City relating to the City Agreements, the City Resolution, the City's Amended JPA Agreement Resolution and the Official Statement, shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect, except as may have been agreed to by the City and Underwriter; and

(e) As of or prior to the date of the Closing, the Underwriter shall have received each of the following documents:

(1) Certified copies of the Authority Resolution, the City Resolution and each Amended JPA Agreement Resolution.

(2) Duly executed copies of the Indenture, the Assignment Agreements, the Lease Agreements, the Site Lease Amendments, the Escrow Agreement, the Continuing Disclosure Certificate and this Purchase Contract.

(3) The Preliminary Official Statement and the Official Statement, with the Official Statement duly executed on behalf of the Authority and the City.

(4) An approving opinion of Bond Counsel, dated as of the Closing, as to the validity of the Bonds and the exclusion of interest on the Bonds from federal gross income and State income taxation, addressed to the Authority and the City substantially in the form attached as an appendix to the Official Statement, and a reliance letter with respect thereto addressed to the Underwriter.

(5) A supplemental opinion of Bond Counsel, addressed to the Underwriter, to the effect that:

(i) The Purchase Contract has been duly executed and delivered by the Authority and the City and is valid and binding upon the Authority and the

City, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles;

(ii) The Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(iii) The statements contained in the Official Statement on the cover and under the headings "INTRODUCTION," "THE BONDS," "SECURITY FOR THE BONDS" and "TAX MATTERS," and in "APPENDIX A - SUMMARY OF PRINCIPAL LEGAL DOCUMENTS" and "APPENDIX E – FORM OF OPINION OF BOND COUNSEL," insofar as such statements purport to describe certain provisions of the Bonds, the Lease Agreements and the Indenture, or to state legal conclusions and the opinion of Bond Counsel regarding the tax-exempt nature of the Bonds, present a fair and accurate summary of the provisions thereof.

(6) A letter of Jones Hall, A Professional Law Corporation, as Disclosure Counsel ("**Disclosure Counsel**"), addressed to the Authority, the City and the Underwriter, to the effect that, based upon the information made available to them in the course of their participation in the preparation of the Official Statement and without passing on and without assuming any responsibility for the accuracy, completeness and fairness of the statements in the Official Statement, and having made no independent investigation or verification thereof, no facts have come to their attention that lead them to believe that, as of the date of the Closing, the Official Statement (except for the appendices thereto, any financial or statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion, or any information about The Depository Trust Company or its book-entry only system, as to which no opinion or view need be expressed) contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) An opinion of _____, as counsel to the Underwriter ("**Underwriter's Counsel**"), addressed to the Underwriter, in form and substance acceptable to the Underwriter.

(8) An opinion of the City Attorney, dated as of the Closing addressed to the Authority, the City and the Underwriter, in form and substance acceptable to the Underwriter, to the effect that:

(i) The City is a municipal corporation and charter city duly organized and validly existing under the laws and the Constitution of the State of California. The City Council is the governing body of the City.

(ii) The City has all necessary power and authority to adopt the City Resolution and the City's Amended JPA Agreement Resolution, to enter into and perform its duties under the City Agreements, and, when executed and delivered by the respective parties thereto, the City Agreements will each constitute a legal, valid and binding obligation of the City enforceable in accordance with its respective terms.

(iii) The City Resolution and the City's Amended JPA Agreement Resolution were duly adopted at a meeting of the City Council, which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout and the City Resolution and the City's Amended JPA Agreement Resolution are in full force and effect and has not been modified, amended or rescinded since the date of its adoption.

(iv) The execution and delivery by the City of the City Agreements, the Official Statement and the other instruments contemplated by any of such documents to which the City is a party, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound in a manner which would materially adversely affect the City's performance under the City Agreements.

(v) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the City of its obligations under the City Agreements have been obtained and are in full force and effect.

(vi) To the best of the City Attorney's knowledge, based upon reasonable inquiry, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the City (A) affecting the existence of the City or the titles of its City Council members or its officers to their respective offices, (B) seeking to restrain or to enjoin the issuance or sale of the Bonds, (C) in any way contesting or affecting the validity or enforceability of the City Resolution, the City's Amended JPA Agreement Resolution or the City Agreements, (D) in any way contesting the powers of the City to issue or sell the Bonds or its authority with respect to the City Resolution, the City's Amended JPA Agreement Resolution or the City Agreements, (E) in any way contesting or affecting any of the rights, powers, duties or obligations of the City with respect to the money or property pledged or to be pledged under the Indenture, the Lease Agreements or the Site Lease Amendments or (F) in any way questioning the accuracy of the statements in the Official Statement.

(vii) The Authority is a joint exercise of powers authority organized and validly existing under the laws of the State of California. The Authority Commission of the Authority is the governing body of the Authority.

(viii) The Authority has all necessary power and authority to adopt the Authority Resolution, the Authority's Amended JPA Agreement Resolution and the Authority Bylaws Resolution, to enter into and perform its duties under the Authority Agreements and, when executed and delivered by the respective

parties thereto, the Authority Agreements will each constitute a legal, valid and binding obligation of the Authority enforceable in accordance with its terms.

(ix) The Authority Resolution, the Authority's Amended JPA Agreement Resolution and the Authority Bylaws Resolution were each duly adopted at a regular meeting of the Authority Commission, which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout and the Authority Resolution, the Authority's Amended JPA Agreement Resolution and the Authority Bylaws Resolution are each in full force and effect and none has not been modified, amended or rescinded since the date of its adoption.

(x) To the best of the City Attorney's knowledge, based upon reasonable inquiry, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Authority (A) affecting the existence of the Authority or the titles of its Commission members or its officers to their respective offices, (B) seeking to restrain or to enjoin the issuance or sale of the Bonds, (C) in any way contesting or affecting the validity or enforceability of the Authority Resolution, the Authority's Amended JPA Agreement Resolution, the Authority Bylaws Resolution or the Authority Agreements, (D) in any way contesting the powers of the Authority to issue or sell the Bonds or its authority with respect to the Authority Resolution, the Authority's Amended JPA Agreement Resolution, the Authority Bylaws Resolution or the Authority Agreements, (E) in any way contesting or affecting any of the rights, powers, duties or obligations of the Authority with respect to the money or property pledged or to be pledged under the Indenture, the Lease Agreements or the Site Lease Amendments or (F) in any way questioning the accuracy of the statements in the Official Statement.

(xi) The execution and delivery by the Authority of the Authority Agreements, the Official Statement and the other instruments contemplated by any of such documents to which the Authority is a party, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States or any department, division, agency or instrumentality of either thereof, or any applicable court or administrative decree or order or any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the Authority is a party or is otherwise subject or bound in a manner which would materially adversely affect the Authority's performance under the Authority Agreements.

(xii) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Authority of its obligations under the Authority Agreements have been obtained and are in full force and effect.

(xiii) Nothing has come to the attention of the City Attorney which has led the City Attorney to believe that the Official Statement (excluding therefrom the financial and statistical data and forecasts included therein and information

about The Depository Trust Company, as to which no opinion need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect.

(9) An executed certificate of the Authority and the City, dated as of the date of the Preliminary Official Statement, in the form attached as Exhibit B.

(10) An executed closing certificate of the Authority, dated as of the Closing, in the form attached as Exhibit C.

(11) An executed closing certificate of the City, dated as of the Closing, in the form attached as Exhibit D.

(12) The opinion of counsel of the Trustee and the Escrow Agent, dated as of the Closing, addressed to the Authority, the City and the Underwriter to the effect that:

(i) The Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the State, having full powers and authority and being qualified to enter into, accept and administer the trust created under the Indenture, the Assignment Agreements and the Escrow Agreement and to enter into the Indenture, the Assignment Agreements and the Escrow Agreement.

(ii) The Indenture, the Assignment Agreements and the Escrow Agreement have been duly authorized, executed and delivered by the Trustee, and, assuming due authorization, execution and delivery by the other parties thereto, the Indenture, the Assignment Agreements and the Escrow Agreement constitute legal, valid and binding agreements of the Trustee enforceable in accordance with their terms, subject to laws relating in bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought.

(13) A certificate of the Trustee, dated as of the Closing, in the form attached as Exhibit E.

(14) A tax certificate duly signed on behalf of the Authority and the City.

(15) Evidence of required filings with the California Debt and Investment Advisory Commission.

(16) Evidence of one or more of the CLTA or ALTA title insurance policies required under the Lease Agreements for the real property described therein.

(17) A copy of the executed Blanket Issuer Letter of Representations by and between the Authority and DTC relating to the book-entry system.

(18) Evidence that the Bonds have received the rating set forth on the cover of the Official Statement.

(19) A defeasance opinion of Bond Counsel.

(20) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or Bond Counsel may reasonably request to evidence compliance by the Authority and the City with legal requirements, the truth and accuracy, as of the date of the Closing, of the representations of the Authority and the City herein contained and of the Official Statement and the due performance or satisfaction by the Authority and the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Authority and the City.

All of the opinions, letters, certificates, instruments and other documents mentioned in this Purchase Contract shall be deemed to be in compliance with the provisions of this Purchase Contract if, but only if, they are in form and substance satisfactory to the Underwriter. If the Authority and the City are unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Bonds contained in this Purchase Contract or if the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriter, the Authority nor the City shall be under further obligations hereunder, except that the respective obligations of the Authority, the City and the Underwriter set forth in Section 11 of this Purchase Contract shall continue in full force and effect.

Section 9. Conditions to Authority's and City's Obligations. The performance by the Authority and the City of their respective obligations under this Purchase Contract are conditioned upon: (i) the performance by the Underwriter of its obligations hereunder and (ii) receipt by the Authority and the City of opinions addressed to the Authority and the City, and receipt by the Underwriter of opinions addressed to the Underwriter, and the delivery of certificates being delivered on the date of the Closing by persons and entities other than the Authority and the City.

Section 10. Termination Events. The Underwriter shall have the right to terminate the Underwriter's obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds by notifying the Authority and the City of its election to do so if, after the execution hereof and prior to the Closing, any of the following events occurs:

(1) the marketability of the Bonds or the market price thereof, in the opinion of the Underwriter, has been materially and adversely affected by any decision issued by a court of the United States (including the United States Tax Court) or of the State of California, by any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Department of the Treasury of the United States, the Internal Revenue Service, or other governmental agency of the United States, or any governmental agency of the State of California, or by a tentative decision or announcement by any member of the House Ways and Means Committee, the Senate Finance Committee, or the Conference Committee with respect to contemplated legislation or by legislation enacted by, pending in, or favorably reported to either the House of Representatives or either House of the Legislature of the State of California, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State of California by the Governor of the State of California in an executive communication, affecting the tax status of the Authority or the City, its property or income, its bonds (including the Bonds) or the interest thereon or any tax exemption granted or authorized by the Internal Revenue Code of 1986, as amended;

(2) the United States becomes engaged in hostilities that result in a declaration of war or a national emergency, or any other outbreak of hostilities occurs, or a local, national or international calamity or crisis occurs, financial or otherwise, the effect of such outbreak, calamity or crisis being such as, in the reasonable opinion of the Underwriter, would affect materially and adversely the ability of the Underwriter to market the Bonds;

(3) there occurs a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States, New York State or California State authorities;

(4) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission is issued or made to the effect that the issuance, offering or sale of the Bonds is or would be in violation of any provision of the Securities Act of 1933, as then in effect, or of the Securities Exchange Act of 1934, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(5) legislation is enacted by the House of Representatives or the Senate of the Congress of the United States of America, or a decision by a court of the United States of America is rendered, or a ruling or regulation by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter is made or proposed to the effect that the Bonds are not exempt from registration, qualification or other similar requirements of the Securities Act of 1933, as then in effect, or of the Trust Indenture Act of 1939, as then in effect;

(6) in the reasonable judgment of the Underwriter, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be materially and adversely affected because additional material restrictions not in force as of the date hereof is imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(7) the Comptroller of the Currency, The New York Stock Exchange, or other national securities exchange, or any governmental authority, imposes, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, or financial responsibility requirements of the Underwriter;

(8) a general banking moratorium is established by federal, New York or State authorities;

(9) any legislation, ordinance, rule or regulation is introduced in or be enacted by any governmental body, department or agency in the State or a decision of a court of competent jurisdiction within the State is rendered, which, in the opinion of the Underwriter, after consultation with the Authority and the City, materially adversely affects the market price of the Bonds;

(10) any federal or California court, authority or regulatory body takes action materially and adversely affecting the collection of Lease Payments or the payment of debt service on the Bonds;

(11) any withdrawal, downgrading or placement on credit watch negative of any underlying rating of any securities of the City by a national municipal bond rating agency that, in the opinion of the Underwriter, adversely affects the market price of the Bonds; or

(12) an event occurs which in the reasonable opinion of the Underwriter makes untrue or misleading in any material respect any statement or information contained in the Official Statement (other than any information relating to the Underwriter).

Section 11. Payment of Expenses. (a) The Underwriter shall be under no obligation to pay, and the City shall pay the following expenses incident to the performance of the Authority's and the City's obligations hereunder:

(i) the fees and disbursements of Bond Counsel and Disclosure Counsel;

(ii) the cost of printing and delivering the Bonds, the Preliminary Official Statement and the Official Statement (and any amendment or supplement prepared pursuant to Section 4 of this Purchase Contract);

(iii) the fees and disbursements of accountants, financial advisers and of any other experts or consultants retained by the Authority or the City; and

(iv) any other expenses and costs of the Authority and the City incident to the performance of their respective obligations in connection with the authorization, issuance and sale of the Bonds, including out-of-pocket expenses and regulatory expenses, and any other expenses agreed to by the parties.

(b) The Authority shall be under no obligation to pay, and the Underwriter shall pay, any fees of the California Debt and Investment Advisory Commission, the cost of obtaining CUSIP numbers, the cost of preparation of any "blue sky" or legal investment memoranda and this Purchase Contract; and all other expenses incurred by the Underwriter in connection with its public offering and distribution of the Bonds (except those specifically enumerated in paragraph (a) of this section), including the fees and disbursements of Underwriter's Counsel and any advertising expenses.

Section 12. Notices. Any notice or other communication to be given to the Authority or the City under this Purchase Contract may be given by delivering the same in writing to the Authority and the City at the addresses set forth on the first page of this Purchase Contract, and any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by delivering the same in writing to _____.

Section 13. Survival of Representations, Warranties, Agreements. All of the Authority's and the City's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect regardless of: (a) any investigations made by or on behalf of the Underwriter; or (b) delivery of and payment for the Bonds pursuant to this Purchase Contract. The agreements contained in this Section and in Section 11 shall survive any termination of this Purchase Contract.

Section 14. Benefit; No Assignment. This Purchase Contract is made solely for the benefit of the Authority, the City and the Underwriter (including its successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. The rights and

obligations created by this Purchase Contract are not subject to assignment by the Underwriter, the Authority or the City without the prior written consent of the other parties hereto.

Section 15. Severability. In the event that any provision of this Purchase Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Purchase Contract.

Section 16. Counterparts. This Purchase Contract may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute the Purchase Contract by signing any such counterpart.

Section 17. Governing Law. This Purchase Contract shall be governed by the laws of the State of California.

Section 18. Effectiveness. This Purchase Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the Authority and the City, and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

_____, as Underwriter

By: _____
Authorized Representative

Accepted:

BERKELEY JOINT POWERS FINANCING
AUTHORITY

By: _____
Authorized Representative

Time of Execution: _____

CITY OF BERKELEY

By: _____
Finance Director

Time of Execution: _____

EXHIBIT A

\$ _____ *

**BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)**

MATURITY SCHEDULE

Serial Bonds

Principal Payment Date <u>(November 1)</u>	<u>Principal</u>	<u>Rate</u>	<u>Yield</u>	<u>Price</u>
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Term Bonds

REDEMPTION

EXHIBIT B

\$ _____ *

**BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)**

15c2-12 CERTIFICATE

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the City of Berkeley (the "City") and the Berkeley Joint Powers Financing Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the City and the Authority as follows:

(1) This Certificate is delivered in connection with the offering and sale of the bonds captioned above (the "Bonds") in order to enable the underwriter of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule").

(2) In connection with the offering and sale of the Bonds, there has been prepared a Preliminary Official Statement, setting forth information concerning the Bonds, the Authority and the City (the "Preliminary Official Statement").

(3) As used herein, "Permitted Omissions" means the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters, all with respect to the Bonds.

(4) The Preliminary Official Statement is, except for the Permitted Omissions, deemed final within the meaning of Rule 15c2-12, and the information therein is accurate and complete except for the Permitted Omissions.

Dated: October __, 2012

CITY OF BERKELEY

By: _____
Authorized Officer

BERKELEY JOINT POWERS
FINANCING AUTHORITY

By: _____
Authorized Officer

EXHIBIT C

\$ _____ *

**BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)**

CLOSING CERTIFICATE OF THE AUTHORITY

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the Berkeley Joint Powers Financing Authority (the "Authority"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the Authority as follows:

(i) The representations, warranties and covenants of the Authority contained in the Bond Purchase Agreement dated October __, 2012, by and among the Authority, the City of Berkeley and _____, as underwriter (the "Purchase Contract"), are true and correct and in all material respects on and as of the date of the Closing with the same effect as if made on the date of the Closing.

(ii) The Authority Resolution, the Authority's Amended JPA Agreement Resolution and the Authority Bylaws Resolution are each in full force and effect at the date of the Closing and none has not been amended, modified or supplemented, except as agreed to by the Authority and the Underwriter.

(iii) The Authority has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) Subsequent to the date of the Official Statement and on or prior to the date of such certificate, there has been no material adverse change in the condition (financial or otherwise) of the Authority, whether or not arising in the ordinary course of the operations of the Authority, as described in the Official Statement.

(v) The Official Statement, under the heading "THE AUTHORITY," does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given in the Bond Purchase Agreement.

Dated: October __, 2012

BERKELEY JOINT POWERS
FINANCING AUTHORITY

By: _____
Authorized Officer

EXHIBIT D

\$ _____ *

**BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)**

CLOSING CERTIFICATE OF THE CITY

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of the City of Berkeley (the "City"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the City as follows:

(i) The representations, warranties and covenants of the City contained in the Bond Purchase Agreement dated October __, 2012, by and among the City, the Berkeley Public Financing Authority and _____, as underwriter (the "Purchase Contract") are true and correct and in all material respects on and as of the date of the Closing with the same effect as if made on the date of the Closing.

(ii) The City Resolution and the City's Amended JPA Agreement Resolution are in full force and effect at the date of the Closing and has not been amended, modified or supplemented, except as agreed to by the City and the Underwriter.

(iii) The City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied on or prior to the date of the Closing.

(iv) Subsequent to the date of the Official Statement and on or prior to the date of such certificate, there has been no material adverse change in the condition (financial or otherwise) of the City, whether or not arising in the ordinary course of operations, as described in the Official Statement.

(v) The Official Statement (other than any information it contains concerning the Depository Trust Company and the book-entry system for the Bonds or provided by the Underwriter) does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used but not defined herein have the meanings given in the Purchase Contract.

Dated: October __, 2012

CITY OF BERKELEY

By: _____
Authorized Officer

EXHIBIT E

\$ _____ *

**BERKELEY JOINT POWERS FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds
(1999 and 2003 Refinancing)**

CLOSING CERTIFICATE OF THE TRUSTEE

The undersigned hereby certifies and represents that he or she is the duly appointed and acting representative of The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), and is duly authorized to execute and deliver this Certificate and further hereby certifies and reconfirms on behalf of the Trustee as follows:

(i) The Trustee has all necessary power to enter into the Indenture, dated as of October 1, 2012 (the "Indenture"), the Assignment Agreements, dated as of October 1, 2012 (the "Assignment Agreements") and the Escrow Deposit and Trust Agreement, dated as of October 1, 2012 (the "Escrow Agreement"); and

(ii) The Indenture, the Assignment Agreements and the Escrow Agreement have been duly authorized, executed and delivered by the Trustee and the Indenture, the Assignment Agreements and the Escrow Agreement constitute the legal, valid and binding obligations of the Trustee enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought;

(iii) No consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Trustee that has not been obtained is or will be required for the execution and delivery of the Trustee or the performance by the Trustee of its duties and obligations under the Indenture, the Assignment Agreements and the Escrow Agreement ;

(iv) The execution and delivery by the Trustee of the Indenture, the Assignment Agreements and the Escrow Agreement and compliance with the terms thereof will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, indenture, bond, note, resolution or any other agreement or instrument to which the Trustee is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Trustee or any of its activities or properties (except that no representation, warranty or agreement need be made by such counsel with respect to any federal or State securities or blue sky laws or regulations); and

(v) There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental agency, public board or body pending, or to the best knowledge of the Trustee, threatened against the Trustee which in the reasonable judgment of the Trustee would affect the existence of the Trustee or in any way contesting or affecting the validity or enforceability of the Indenture, the Assignment Agreements and the Escrow Agreement or contesting the powers of the Trustee or its authority to enter into and perform its obligations thereunder.